



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00492

Appearances

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se*

08/26/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On April 12, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on May 21, 2014 and requested a hearing. The case was assigned to me on June 26, 2014, and was scheduled for hearing on July 24, 2014. At hearing, the Government's case consisted of three exhibits (GEs 1-3). Applicant relied on two witnesses (including himself) and six exhibits (AEs A-F). The transcript (Tr.) was received on August 8, 2014.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with an updated credit report and account history of his creditors. For good cause shown, Applicant was granted 10 days to supplement the record. The Government was afforded two days to respond.

Within the time requested, Applicant documented the closing of his creditor 1.e account with a zero balance and his satisfaction of his creditor 1.b debt. Applicant's submissions were admitted as AEs G and H.

Summary of Pleadings

Under Guideline F, Applicant allegedly incurred an adverse judgment against him in November 2010 for \$2,707 and accumulated four delinquent debts exceeding \$25,000. His listed debts covered consumer accounts and a business loan.

In his response to the SOR, Applicant admitted one of the debts but denied the remaining four debts listed in the SOR. He claimed the debt covered by subparagraph 1.e involved a business loan to cover the day-to-day operations of his wife's mortgage business.

Applicant claimed his wife's mortgage company has since gone out of business. Applicant claimed he and his wife have earnestly tried "to get back on our feet since the event has happened." He claimed they have agreed on a repayment plan with creditor 1.e.

Findings of Fact

Applicant is a 42-year-old request fulfillment coordinator of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in September 1994 and has one child from this marriage. (GE 1) He has earned some college credits since January 2012. (GE 1) Applicant enlisted in the Navy in September 1989 and served 20 years of active duty before receiving his honorable discharge in September 2009. (GE 1; Tr. 61-62)

Applicant's finances

Between 2005 and 2012, Applicant accumulated a number of delinquent debts. One of the debts involved a \$6,000 line of credit Applicant and his wife jointly obtained from a lending institution (creditor 1.e) in 2006 to fund the business operations of a mortgage company his wife established in 2005. (GE 3 and AEs F and G; Tr. 39)

With the deterioration of the real estate market in Applicant's community in the 2007-2008 period, Applicant's wife could no longer finance her business and closed it in 2008. (AE E; Tr. 40-42) Neither she nor Applicant ever repaid the carried loan balance with the collection assignee of creditor 1.e, and the creditor closed out the account with a noted zero balance. (GE 3 and AEs A and G) Neither Applicant nor his wife ever acknowledged any payoff or payments to this creditor; neither could reconcile the opening date revealed in Applicant's credit report (i.e., February 2012) with the date of Applicant's wife's reported business loan in 2006. (GE 1 and AEs F and G; Tr. 47-50)

The debt identified in AE F states only that the account was closed and provides no explanations of the account's status. Applicant himself described the account in AE G as closed. (AE G) Whether the loan account identified in Applicant's credit report and AE G was sold or assigned to the lender identified in AE F cannot be verified from Applicant's credit report and cannot be presumed based on the limited documentation available. (GE 3 and AE F) Under these circumstances, Applicant's assurances that the loan identified in AE F is the same debt as the one identified in AE G cannot be corroborated or verified. (AE F; Tr. 46-51). Currently, Applicant and his wife are in no financial position to fulfill the payment terms (\$100 a month) imposed by the creditor identified in AE F. (Tr. 51-52) They expect to be able to meet the monthly payment terms set by this creditor once Applicant's spouse obtains employment. (Tr. 51)

Besides the business loan Applicant co-signed for his wife, and which is evidenced in his credit report (GE 3), Applicant incurred other consumer debts. They are documented in his June 2013 credit report as follows: a judgment obtained by creditor 1.a against Applicant in November 2010 for \$2,707; a utility debt assigned for collection (creditor 1.b) in the amount of \$2,059; a medical debt (creditor 1.c) for \$150; and a consumer debt (creditor 1.d) for \$1,750. (GE 3; Tr. 36-37, 46)

From Applicant's credit report, his furnished documentation, and the hearing testimony of Applicant and his wife, inferences warrant that the debt covered by the judgment referenced in subparagraph 1.a of the SOR is one and the same as the debt identified in subparagraph 1.d. (GE 3 and AE A; Tr. 54) Both listed debts cover the same account numbers and the same original creditor. Applicant cannot identify the medical debt (\$150) covered by subparagraph 1.c. Neither he nor his wife recognize this debt. Although his wife incurred a number of medical expenses associated with her car accident in September 2013, she does not recognize the creditor 1.c debt as one either she or her husband incurred. (Tr. 54) Their explanations are credible and are accepted.

Applicant attributes his debts to both the poor economy that affected his wife's mortgage business and his wife's accident in September 2013 that has prevented her from returning to work. (AE C; Tr. 37-41) Her short-term disability benefits expired in December 2013, and for almost six months (i.e., December 2013 through April 2014), she was not able to produce any income of her own. (Tr. 57-60)

In March 2014, Applicant was notified by her employer that her position was eliminated, effective April 13, 2014. (AE D; Tr. 57-58) She continues to look for work, but is currently unemployed. Neither Applicant nor his wife sought financial counseling to guide them during his wife's recovery. (Tr. 56) Since December 2013, Applicant and his wife have made concerted efforts to settle their identified debts. He documented the satisfaction of his creditor 1.a judgment with a confirming post-hearing memorandum from the creditor in August 2014. (AE A; Tr. 36-37, 46) Applicant's submissions also document his payment in full of his creditor 1.b account. (AE H; Tr. 36-37)

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." They must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: Failure or inability to live within one's means satisfy debts and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG, ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of

demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant’s history of delinquent debts, attributable to his wife’s loss of income following the closing of her mortgage business in 2008, her ensuing accident in 2013, and her extended unemployment following her employer’s elimination of her job in April 2014. His delinquent debts have since been addressed.

Applicant’s delinquent debts were mostly consumer-related debts, but included a delinquent business loan associated with his wife’s closed mortgage business. His debt accruals raise potential security concerns about his judgment, reliability, and trustworthiness in managing his personal finances. His actions warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), “inability or unwillingness to satisfy debts;” and DC ¶ 19(c) “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant’s extended income losses associated with his wife’s closing of her mortgage business and ensuing losses following her accident and more recent job elimination reflect extenuating circumstances. Considered together, they entitle him to the application of MC ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances,” to his situation.

Applicant received no financial counseling that would entitle him to any additional mitigation credit. His accepted good-faith disputes of his creditor 1.c debt (does not recognize) and creditor 1.d debt (duplication) entitles him to application of MC ¶ 20(e), “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

By settling or resolving all but one of his listed delinquent debts, Applicant has established a promising track record for resolving his debts. MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,”

applies to Applicant's situation. His documented payoffs reflect satisfactory progress in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

In determining whether Applicant acted reasonably when dealing with his financial difficulties caused by his wife's business and job losses, consideration is given to his documented track record of sustained repayment efforts amidst extenuating circumstances. Applicant's actions satisfied a major component of the criteria established by the Appeal Board to gauge an applicant's payment initiatives. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan., 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

While Applicant has not paid or settled one of his covered creditors (i.e., creditor 1.e), the account has since been closed with a zero balance. And it is settled practice that an applicant need not have paid every debt alleged in the SOR to restore his financial trustworthiness. So long, as Applicant is able to establish a credible and realistic plan to resolve his financial problems, accompanied by significant actions to implement the plan, he meets the Appeal's Board requirements for stabilizing his finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008).

Applicant satisfied the Appeal Board's payment plan requirements with his payment of two of the listed debts, successful disputes of his remaining two debts, and his expressed expectations of meeting the monthly payment terms of the creditor he believes to be the successor of creditor 1.e once his wife obtains employment. Mitigation efforts necessary to satisfy Appeal Board payment plan requirements are met.

From a whole-person standpoint, the evidence reflects some unfortunate economic circumstances associated with Applicant's wife's unanticipated business and job losses and inability to find gainful employment. Applicant's efforts reflect good-faith measures to address his debts with the limited resources available to him and his wife. Overall, Applicant's corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas. 1.a through 1.e:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

