



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00629

Appearances

For Government: Daniel Crowley, Esq., Department Counsel

For Applicant: *Pro se*

09/05/2014

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 28, 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 13, 2014, and requested a hearing. The case was assigned to me on June 18, 2014, and was scheduled for hearing on July 23, 2014. At hearing, the Government's case consisted of two exhibits (GEs 1-2). Applicant relied on one witness (himself) and four exhibits (AEs A-D). The transcript (Tr.) was received on July 30, 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 accounting information that he furnished his accountant in 2013. For good cause shown, Applicant was granted 11 days to supplement the record. The Government was afforded two days to respond.

Within the time requested, Applicant documented his automatic extension requests for the filing of his federal tax returns and accounting activity in 2013. Applicant's submissions were admitted as AE E.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file federal and state tax returns for tax years 2010 and 2011 and (b) accumulated three delinquent debts approximating \$200. These debts allegedly remain unpaid.

In his response to the SOR, Applicant denied allegations he failed to file federal and state tax returns. He admitted two of the three alleged debts, but denied the third one covered by subparagraph 1.e. He claimed he filed federal and state returns for tax years 2010 and 2011 and received refunds. He claimed the medical debts alleged in subparagraphs 1.c-1.d belong to his 20-year-old daughter, who is covered by his medical insurance policy. Applicant claimed he became aware of his daughter's bills only after receiving a collection notice mailed to him. He claimed he found out about the debt covered by subparagraph 1.e in his security clearance interview and challenges the validity of the debt.

Findings of Fact

Applicant is a 47-year-old senior quality engineer of a defense contractor who seeks the continuation of the security clearance he was first granted in May 1989. (GE 1) 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 October 1991 and has two adult children from this marriage. (GE 1; Tr. 55) He earned a bachelor's degree in industrial electronics engineering in May 1989 and a master's degree in systems engineering in 2013, both from recognized universities (GE 1; Tr. 34) Applicant claims no military service.

Before accepting his current position in April 2010, Applicant was unemployed for several months (i.e., November 2009 to April 2010). Between July 2005 and November 2009, he worked for automotive firms: as a senior quality engineer with his first employer and as a quality systems management team leader for his latter employer. (GE 1; Tr. 36-37) Currently, he works as a team lead for his employer's supply development and quality group. (Tr. 34)

Applicant's finances

In the security clearance application (e-QIP) he completed in September 2013, Applicant noted that he failed to file his federal and state income tax returns for the tax years of 2010 and 2011. (GE 1) He acknowledged no "logical explanation or excuse for not filing," and assured he was in the process of filing his returns for both 2010 and 2011. Based on the data he furnished his accountant, Applicant expected to receive refunds for both years. (GE 1)

Applicant obtained automatic extensions for filing his federal and state tax returns for the 2010 and 2011 filing years. (AE E) He provided no documentation of obtaining additional extensions. Applicant filed his federal and state tax returns for the 2010 and 2011 tax years in December 2013. (AE E; Tr. 38-40) He received refunds on his federal returns for both 2010 and 2011 in 2014: \$1,159 on his 2010 return and \$195 on his 2011 return. (AEs A-B and E; Tr. 47-51) On his 2010/2011 state returns he received refunds of \$100 for each tax year in 2014. (Tr. 51-52) Applicant has since filed timely tax returns for 2012 and 2013. (Tr. 42)

Applicant attributes his failure to file his tax returns timely to complications in his paper work associated in part with periods of unemployment and his wife's medical issues. (Tr. 38-39) Applicant's documented returns reveal his forwarding tax information to his accountant in March 2013, filing his returns in December 2013, and receiving tax refunds in 2014. (AE E; Tr. 78-80)

By the time an investigator from the Office of Personnel Management (OPM) came to interview Applicant about his security clearance application in 2013, Applicant had already provided the required accounting information to his accountant. (Tr. 75-76) Applicant's explanations are credible and are accepted. Applicant never pursued financial counseling.

Besides failing to file timely federal and state tax returns, Applicant accumulated two delinquent medical debts of \$99 and \$71 respectively. (GEs 1 and 2) The medical debts (creditors 1.c and 1.d) reflect unpaid cost shares by Applicant's 20-year-old daughter who was listed as an insured on Applicant's medical insurance policy. (GE 2; Tr. 32, 35-36) Addressing the listed creditor 1.e utility debt, Applicant expressed unfamiliarity with this debt and has initiated efforts to get the debt removed from his credit report. (Tr. 33-34, 46) Applicant did not become aware of the medical or utility debts until he was interviewed by an OPM agent in 2013. (Tr. 31, 45) He has since paid the two medical debts. (AE C; Tr. 45)

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 failure to timely file federal and state income tax returns for 2010 and 2011 and his history of accumulating three small delinquent medical and utility debts totaling a little more than \$200. He attributed his filing delays to unemployment and paper work complications associated with his wife's medical issues. Lack of knowledge and familiarity with the debts was his assigned reason for not addressing the listed debts earlier in time. Applicant's delinquent federal and state tax filings and outstanding account balances have since been addressed.

Applicant's delinquent debts were small in number and amounts (just over \$200), but still raise some security concerns when considered in conjunction with his late federal and state tax filings. His filing delays and accrued debts raise potential security concerns about his judgment, reliability, and trustworthiness in managing his personal finances. Applicant's actions warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts;" DC ¶ 19(c) "a history of not meeting financial obligations;" and DC ¶ 19(g), "failure to file annual [f]ederal, state, or local income tax returns as required or the fraudulent filing of the same."

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 failure to file timely federal and state tax returns cannot be considered to be the result of extenuating circumstances. He had held a security clearance for a considerable number of years and was aware of the importance of filing timely tax returns. He offered no excuses for his past filing failures in his E-Qip. (GE 1) Cited complications with his compiling the requested accounting information required by his accountant inferentially played only a small role in his failure to attend to these matters in a timely way.

By contrast, Applicant's lack of familiarity with the two medical debts at issue can be characterized as extenuating and a plausible explanation of why he failed to address these debts before they became delinquent. Considered together, Applicant's reasons for failing to address his medical debts before they became delinquent are sufficient to warrant 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."

Applicant received no financial counseling that would entitle him to any additional mitigation credit. His accepted good-faith dispute of his creditor 1.e debt (which he does not recognize) 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 filing his federal and state tax returns (albeit out of time) and settling or resolving all but one of his listed delinquent debts, Applicant has established a more promising track record for meeting his legal obligations and managing his finances. MC

¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies to Applicant’s situation.

Applicant’s documented tax-filings and 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. 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). ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009).

While Applicant has not paid or settled one of his covered creditors (i.e., creditor 1.e), it is a relatively small debt (\$52), which Applicant disputes. 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).

From a whole-person standpoint, the evidence reflects some Applicant judgment lapses in his failing to obtain additional tax-filing extensions and address his small medical debts earlier in time. His most recent filing and payment initiatives reflect good-faith measures to address his tax returns and debts. 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

