



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00719

Appearances

For Government: John B. Glendon, Esq., Department Counsel

For Applicant: *Pro se*

06/30/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate security concerns regarding her criminal conduct and finances. Eligibility for access to classified information is denied.

History of the Case

On April 29, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make a preliminary affirmative determination of eligibility for granting 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 the DOD on September 1, 2006.

Applicant responded to the SOR on August 7, 2014, and elected to have her case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on March 23, 2015, and responded to the FORM with a two-page updated response within the time permitted. Her updated response was admitted as Item 5. The case was assigned to me on May 21, 2015.

Summary of Pleadings

Under Guideline J, Applicant allegedly was arrested (a) five times in her state of residence from 2010 to August 2013 for driving on a suspended license and (b) once in April 2012 for failure to appear on a warrant. Under Guideline F, Applicant allegedly accumulated 16 debts that are either past due or in collection. These debts exceed \$3,000 and remain unpaid.

In her response to the SOR, Applicant admitted each of the alleged traffic-related arrests between 2010 and August 2013 and admitted each of the alleged debt delinquencies. She claimed she experienced numerous unfortunate events in her life after losing her job and accepting much lower paying work that did not enable her to afford the simple necessities of life. She acknowledged her mistakes and claimed she has paid \$600 on her accrued tickets and expects to have them all paid off by September 2015. She provided no documentation of her payments or evidence of her work and civic contributions in her community.

Findings of Fact

Applicant is a 26-year-old secretary for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant is single and has no children. (Item 3) She attended some college classes between September 2008 and January 2009 but did not earn a degree or diploma. (Item 3) Applicant claimed no military service.

Between 2010 and August 2013, Applicant was arrested five times for driving on a suspended license. She was fined in excess of \$2,000 for the offenses covered by the five tickets in two different jurisdictions. After she lost her job in March 2013, she was unemployed for almost six months and could not address the outstanding fines and other accounts. When Applicant returned to work in October 2013, she accepted a secretarial position that paid much less than her former employer. (Items 2 and 5) As a result, she continued to encounter difficulties addressing her outstanding debts.

Applicant's delinquent debts listed in the SOR include six outstanding fines exceeding \$1,200, eight medical accounts exceeding \$1,400, and two consumer debts exceeding \$1,000. (Item 2) Each of these debts remains outstanding.

While Applicant claims to have paid over \$600 on her outstanding fines, she provided no documentation of her payments. (Items 2 and 5) She provided no evidence

of payment plans or financial counseling. Further, she did not provide any endorsements or performance evaluations on her behalf. Nor did she provide any proofs of community and civic contributions.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA 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."

These AGs 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.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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 guidelines are pertinent in this case:

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

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

Applicant is a fully-employed secretary for a defense contractor who accumulated a number of traffic-related citations between 2010 and 2013 covering driving on a suspended license and failure to appear on a warrant. She remains obligated on 16 delinquent debts exceeding \$3,000. Most of the debts involve unpaid traffic fines, which she claims to be addressing. Her remaining eight debts cover delinquent medical accounts.

Criminal conduct concerns

Applicant's traffic-related citations on charges covering driving on a suspended license and failure to appear on a warrant create security concerns that warrant the application of two of the disqualifying conditions (DC) of the guidelines: DC ¶ 31(a), "a single crime or multiple lesser offenses," and DC ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted."

Applicant's series of traffic citations covering driving on a suspended license and failure to appear on a warrant represent serious offenses and disregard of laws designed to ensure safe and responsible driving and compliance with laws governing state law enforcement. Her offenses are cumulative and include fines that remain outstanding. While Applicant's employment circumstances are unfortunate, they do not excuse her recurrent traffic offenses and failure to exercise more financial responsibility in addressing her fines. While she acknowledges her mistakes and expresses remorse, her actions do not warrant application of any of the mitigating conditions. Unfavorable conclusions are warranted with respect to the allegations covered by Guideline J.

Financial concerns

Additional security concerns are raised over Applicant's accumulated debts, many of which are related to her unpaid fines. Applicant's accumulation of delinquent debts and her past inability or unwillingness to address these debts 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 obligation," apply to Applicant's situation.

Applicant's pleading admissions with respect to most of the debts covered in the SOR negate the need for any independent proof (*see McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are fully documented in her latest credit report and provide ample corroboration of her debts.

Some judgment problems persist, too, over Applicant's unexplained delinquencies and her failure to demonstrate she acted responsibly in addressing her listed debts once she returned to work. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Her listed debt delinquencies remain outstanding. Although she claims to

have addressed her fines, she did not provide any documentation of her payments, or any arrangements to pay.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

In Applicant's case, her debts are attributable in part to income losses and unemployment. Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay or otherwise resolve her debts. Partially available to Applicant is MC ¶ 20(b), "the conditions that resulted in the behavior 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." Without documentation of financial counseling and steps she has taken to address her debt delinquencies, mitigation credit is not available to Applicant based on the evidence developed in the record.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by her accumulation of delinquent debts. Since returning to work in October 2013, she has not shown any documented effort in addressing any of her covered debts to mitigate her still delinquent accounts. Resolution of her delinquent accounts is a critical prerequisite to her regaining control of her finances.

While income losses and unemployment conditions might have played a considerable role in her accumulation of her unpaid fines and medical accounts over a relatively short four-year period, Applicant failed to provide documentary material as to how she has addressed her debts. Endorsements and performance evaluations might have been helpful, too, in making a whole-person assessment of her overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable her to establish judgment and trust levels sufficient to overcome security concerns arising out of her accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations and lack of payment documentation, it is still soon to make safe predictive judgments about her ability to repay her debts and restore her finances to stable levels commensurate with the minimum requirements for holding a security clearance. More time is needed to facilitate's Applicant's making the necessary progress with her finances to facilitate conclusions that her finances are sufficiently stabilized to permit her access to classified information. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.p.

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 J (CRIMINAL CONDUCT): AGAINST APPLICANT

 Subparas: 1.a-1b: Against Applicant

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

 Subparas. 1.a through 1.p: Against Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

