



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00802

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant did not mitigate the security concerns regarding his financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On April 30, 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 19, 2014, and requested a hearing. The case was assigned to me on September 2, 2014, and was scheduled for hearing on October 1, 2014. At hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (himself) and five exhibits (AEs A-E). The transcript (Tr.) was received on October 10, 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 documented federal tax payments. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded seven days to respond. Applicant did not submit any tax payment documentation.

Prior to the close of the hearing, Applicant moved to amend his answer to conform to the evidence presented at the hearing. Specifically, he moved to amend his answer to subparagraph 1.m to substitute a denial for his admission to the allegation. He moved to amend his answer to subparagraph 1.l for the reason that the allegation is a duplication of the allegation made in subparagraph 1.e. For good cause shown, Applicant's separate motions were granted, and his answers to subparagraphs 1.l and 1.m were amended to reflect denials to both allegations.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file federal tax returns for tax years 2007 and 2009, and possibly not for tax year 2010; (b) failed to file a state tax return for tax year 2010; (c) incurred delinquent federal income taxes for 2007, 2009, and 2011; (d) incurred an adverse state tax judgment in May 2013 for \$3,646; (e) incurred an adverse judgment in May 2010 for \$1,345; (f) and accumulated six delinquent debts exceeding \$34,000. These tax debts, judgment debts, and consumer debts allegedly remain unpaid.

In his response to the SOR, Applicant admitted each of the allegations, except for subparagraph 1.f, which he denied. For those debts he admitted, he claimed financial hardship contributed to his financial difficulties and claimed to have repayment plans in place for each of the named creditors. Also, he claimed to have filed federal tax returns for tax years 2009-2011. He claimed he was experiencing financial hardship in 2010, which prevented him from filing his federal and state tax returns in a timely way. Further, he claimed he is unaware of the status of his 2010 federal and state tax returns.

Findings of Fact

Applicant is a 37-year-old help desk support representative 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 has never married but resides with a co-habitant. He has three children (two daughters and one son) from this relationship. (GE1; Tr. 39) Applicant claims no post-high school education credits or military service. He furnished no evidence of character endorsements, performance evaluations, or charitable and civic contribution to his community at large.

Applicant's finances

Applicant failed to timely file federal and state income tax returns in 2007, 2009, and 2010. During these periods, he was experiencing financial hardship and did not sign the tax returns he prepared. (GE 3) He claimed to have filed his federal and state tax returns for these back years in 2012 after consulting with a tax specialist. (Tr., at 43-46, 55) His claims are not controverted by any documentation in the admitted exhibits and testimony, are credible, and are accepted. He has since filed his federal tax return for 2012 (receiving a refund of \$7,200) and for 2013. (Tr. 46-47)

Applicant became indebted to the Internal Revenue Service (IRS) for delinquent taxes owed for tax years 2007, 2009, and 2011. (GEs 2 and 3) Specifically, he became delinquent for taxes owed to the IRS as follows: in 2007 for \$2,169; in 2009 for \$1,407; and for 2011 (\$2,133). (GEs 2-5) While some of these federal tax debts have been satisfied in part out of garnishment levies and refunds owed him on his 2012 return, he provided no corroborative evidence to support his claims that the tax debts have been satisfied in full. (Tr. 46-47) Without corroborative evidence to document his claims, the payment status of Applicant's reported federal tax debts for tax years 2007, 2009, and 2011 remains in doubt.

Records show that Applicant has since entered into an installment agreement to cover owed federal taxes for 2010 in the amount of \$350. (AE E; Tr. 45) After making a \$90 payment to the IRS in August 2014, he currently has a \$401 balance owing. (AE E; Tr. 45, 80, 88-89)

Besides accruing delinquent federal tax debts, Applicant incurred two adverse judgments: one a tax debt from his state of residence (creditor 1.d) for delinquent taxes in the amount of \$3,646, and the other a consumer monetary judgment from creditor 1.e in the amount of \$1,345. (GEs 4-6; Tr. 54-60) Neither of these judgments has been satisfied. (Tr. 54-60, 90) At the present time, Applicant does not have the money to satisfy either outstanding judgment. (Tr. 58)

Applicant accumulated other delinquent debts as well. Credit reports reveal he accrued six other delinquent debts exceeding \$34,000. (GEs 2-5). Two of these debts (creditors 1.e and 1.i) represent duplicated debts. (GEs 4-5; Tr. 92-95) Applicant's duplication claims pertaining to these accounts are corroborated and accepted. His remaining listed debts have not been addressed to date and remain outstanding. He is

committed to addressing these outstanding debts when he is financially able to do so, but has made no payment progress to date. (Tr. 64)

Applicant attributed his listed debt delinquencies to less disposable income from his previous employer and medical issues associated with his domestic partner's mother. (GE 3; Tr. 38) Because of her health issues, she has not been able to serve as their full-time caretaker. (Tr. 38) This has required Applicant to miss work and pay a child-care contractor to care for his children (at a cost of around \$900 a month) while he and his domestic partner worked outside their home. (Tr. 38-40)

Applicant provided no evidence of financial counseling. He currently nets approximately \$2,200 a month. (Tr. 41) He estimates his monthly expenses to be approximately \$1,500 a month. This leaves a monthly remainder of about \$700 a month (Tr. 41-42), which he devotes to defraying the costs of gas, food, and other expenses. (Tr. 59) Applicant continues to look for part-time work. (Tr. 61) With the additional income from part-time work and expected federal and state tax refunds in 2015, he expects to be able to satisfy his remaining debts. (Tr. 88-90)

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 chances; (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 (a) federal tax returns for tax years 2007 and 2009, and 2010, and (b) a state tax return for tax year 2010. Additional security concerns arise over Applicant’s accrual of delinquent tax debts, his incurrence of two outstanding judgments (one covering a state tax debt and other covering a credit card debt), and his accumulation of additional delinquent consumer debts. Lowered net income from his previous employer and added child care expenses account for his inability to keep up with his creditors.

Applicant’s accumulated adverse judgments and accumulated delinquent debts raise security concerns when considered in conjunction with his late federal tax filings and omitted state tax filing. His filing delays and accrued judgments and delinquent 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”

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 was manifestly aware of the importance of filing timely federal and state tax returns and paying his tax debts as they came due. The timely filing of federal and state tax returns is an important indicia of an applicant’s establishment of his security clearance worthiness. See ISCR Case No. 12-05053 at 4-5 (October 30, 2014). While he has since filed his federal and state returns covering his back tax years before the issuance of the SOR in 2014, he has failed to provide any proof of his satisfying any of the outstanding tax and consumer judgments and other delinquent debts (except for the manifestly duplicated debt covered in subparagraphs 1.e and 1.i) listed in the SOR.

Cited income shortages attributable to income losses during his previous employment and unanticipated child care expenses have contributed to Applicant's financial problems. Considered together, Applicant's reasons for failing to address his tax and other debts before they became delinquent are sufficient to warrant some 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." Failure to make more concerted efforts to address his debts precludes him from taking full advantage of MC ¶ 20(b).

Applicant received no financial counseling that would entitle him to any additional mitigation credit under MC ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control." His accepted good-faith dispute of his creditor 1.i debt (a duplication of his 1.e judgment debt) 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 2007 and 2009-2010 federal and state tax returns (albeit out of time in 2012) and establishing a payment plan to cover his 2010 federal taxes, Applicant has taken some modest steps towards the stabilizing of his finances. His efforts to date, though, are not enough to warrant more than partial application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." While encouraging, his collective initiatives are not enough to meet the payment 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).

By similar reasoning, Applicant's failure to exert more responsible efforts in filing his federal and state income tax returns in accordance with established federal and state taxing requirements precludes his claiming more than partial mitigation credit for filing his returns out of time in 2012. See ISCR Case No. 12-05053, *supra*, at 4-6. Years of non-tax filing compliance are evident in Applicant's situation and cannot be mitigated alone by his accepted evidence of his recent filings of his delinquent returns.

From a whole-person standpoint, the evidence reflects some Applicant payment progress and late tax filing for back tax years (i.e., 2007, 2009, and 2010). His documented progress is not enough to facilitate an overall positive whole-person assessment. Overall, Applicant's corrective actions to date are not sufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.d, 1.f through 1.k, and 1.l through 1.n. Favorable conclusions are warranted with respect to subparagraph 1.e.

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): AGAINST APPLICANT

Subparas. 1.a through 1.d, 1.f through 1.k,
and 1.l-1.n:

Against Applicant

Subpara. 1.e:

For 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

