



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01165

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro se*

12/30/2014

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 May 5, 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 June 26, 2014, and requested a hearing. The case was assigned to me on September 26, 2014, and was scheduled for hearing on November 13, 2014. At hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and 13 exhibits (AEs A-M). The transcript (Tr.) was received on November 25, 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 endorsements. For good cause shown, Applicant was granted five days to supplement the record. The Government was afforded five days to respond.

Within the time permitted, Applicant supplemented the record with email correspondence, updated credit reports, correspondence from creditor 1.d, a performance assessment and special award from his employer, and a character assessment. Applicant's post-hearing submissions were admitted as AEs N-U.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated an adverse judgment for \$784 and three delinquent debts exceeding \$9,000. One of the alleged debt delinquencies (subparagraph 1.b) covers a mortgage with a balance of \$204,822.

In his response to the SOR, Applicant denied each of the allegations. He claimed that the listed debts were either satisfied (creditor 1.a) resolved by loan modification (creditor 1.b), or paid in full. (creditors 1.c and 1.d) Applicant claimed the listed unpaid balance on his mortgage and the loan balance have been refinanced, eliminating the reported mortgage delinquency. Applicant apologized for having issues on his credit report and claimed pride in possessing a security clearance.

Findings of Fact

Applicant is a 50-year-old lead engineer for 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 July 1990 and has two children from this marriage, ages 16 and 14. (GE 1; Tr. 60-61) He earned a bachelor's of science degree in engineering in 1990. (GE 1; Tr. 65) Applicant claimed no military service.

Applicant's finances

Between 2006 and 2007, Applicant's wife (a licensed practical nurse) became ill and could work no more than part-time to support herself and her family. (GE 5; Tr. 49,

66-69) Applicant and his wife devoted a significant amount of their funds in the early 2000s for medical co-pays on their young son who was diagnosed with an auditory problem. (Tr. 50-51) Applicant's son is currently a high-school honor student. (Tr. 51) Some of the medical expenses allocated to his wife's care in 2006 and 2007 could not be cost-shared and placed severe burdens on their finances. Applicant found it very difficult to set money aside for debt payments during this 2006-2007 time period.

Applicant and his wife bought their home in January 2003 and financed their purchase with a \$255,000 first mortgage. (GEs 2-4; Tr. 70)) To upgrade their home, they obtained a home equity loan in 2008 with the same lender who financed their first mortgage. (GE 4; Tr. 54) This home loan was for \$7,348 and was unsecured. (GE 4; Tr. 54) Applicant has kept this loan in current status and has a loan balance under \$5,000. (GE 4; Tr. 54)

In November 2013, Applicant and his wife refinanced their first mortgage with a loan modification that created a new \$210,000 first mortgage. (GEs 2-4 and AEs D, H, J, and M; Tr. 46, 59, 71-72). Under the payment terms of their loan modification, they were initially placed under a five-month trial payment plan, under which they agreed to make regular payments through April 1, 2014. (Tr. 46-47) After completing this preliminary phase of their loan modification, they were placed in a permanent loan modification program with reduced monthly payments that saved them \$500 a month. (AEs D and H; Tr. 74-75) With the extra mortgage savings, Applicant was able to purchase an automobile in March 2014. (GE 2)

Applicant accumulated the following delinquent debts between 2006 and 2007: a creditor 1.a judgment in December 2009 (\$784); accrued mortgage payments on Applicant's creditor 1.b \$204,822 first mortgage (\$6,433); a charged-off creditor 1.c debt (\$443); and a charged-off creditor 1.d debt (\$2,756). Applicant has since paid off all of these debts with documented payments. (AEs A-I and N-R; Tr. 47, 72) With their loan modification, they were able to fold the delinquent loan balance on their first mortgage into a reworked higher principal balance with lower interest rates. (Tr. 47)

Applicant currently nets \$8,657 a month. (AEs J and K; Tr. 55-56) His monthly debt payments total around \$2,500 on his auto loan, credit card debt, and home equity loan. (Tr. 52, 59). This leaves him a net monthly remainder of \$6,100. (AE J; Tr. 56-57) He has \$10,118 in the 401(k) retirement account he opened in 2010 and has set aside over \$15,000 in college savings accounts for his two children. (AE J) To restore his credit to respectable levels, Applicant entered into a credit repair agreement in May 2014. (AE G) Payment terms for the service called for a total payment of \$1,881 in four increments. (AE G) His most recent credit reports reflect satisfied debts for each of the debts covered in the SOR and a credit score of 620. (AEs C and O-P)

Awards and endorsements

Applicant is well-regarded by his supervisors and colleagues. His appraisal for 2010-2011 assigned him an overall rating of successful contributor and assessed him as

a “competent performer and valued team player, who meets the objectives and expectations of his position.” (AE S) He received regular awards in recognition of his contributions throughout his tenure with the company. (AE T)

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 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 in part to his diminished earnings during a difficult period in 2006-2007 when his wife (a practical nurse) could no longer work full-time. Medical expenses incurred on medical co-pays for the care of his wife and young son were considerable and impaired his ability to pay his bills in a timely way. Applicant's 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 payment problems in 2006 and 2007 were mostly due to diminished income attributable to his wife’s medical issues. When confronted with his increased outlays on his medical co-pays for his wife and son, he struggled to keep up with his bills. His financial problems during this period were aberrational and have since been corrected. Applicant’s past financial problems and recent mitigation efforts merit 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.”

Through his successful reworking of his first mortgage with his loan modification plan, Applicant was able to bring his first mortgage account into current status and maintain it. He has since paid off all of his remaining delinquent debts listed in the SOR and has taken important steps to repair his credit and restore his finances to stable levels consistent with holding a security clearance. Applicant has established a promising track record of resolving his debts. MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” fully applies to Applicant’s situation.

Applicant’s documented debt payments and positive steps taken to repair his credit 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). Applicant’s significant repayment actions to date enable him to meet the Appeal’s Board requirements for stabilizing his finances. ISCR Case No. 07-06482 (App. Bd. May 21 2008); 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).

From a whole-person standpoint, Applicant documents a meritorious record of civilian employment with his defense contractor employer. He has impressive support from his supervisor and colleagues who know him. Addressing his finances, he has developed a solid track record of debt management and is committed to maintaining his finances at respectable levels consistent with holding a security clearance.

Applicant's documented payment initiatives are significant and reflect a serious commitment on his part to restore his credit and stabilize his finances. Overall, Applicant's corrective actions to date are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

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-1.d:

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

