



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

-----

Applicant for Security Clearance

)  
)  
)  
)  
)  
)  
)  
)

ISCR Case No. 14-01667

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro se*

01/12/2015

**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 and personal conduct concerns. Eligibility for access to classified information is granted.

**Statement of Case**

On June 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 July 24, 2014, and requested the case be decided on the basis of the written record. Department Counsel requested a conversion to a hearing. Based on Department Counsel's request, the case was converted to 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 seven exhibits (GEs 1-7). Applicant relied on one witness (himself) and four exhibits (AEs A-D). The transcript (Tr.) was received on November 26, 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. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with an email transmitted to Department Counsel, two updated credit reports, and a transmission report of a request for information from a credit reporting service. Applicant's post-hearing submissions were admitted as AEs E-H.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated seven delinquent debts exceeding \$73,000. Under Guideline E, Applicant allegedly falsified his Electronic Questionnaire for Investigation Processing (e-QIP) of November 11, 2013, by failing to disclose his alleged delinquent debts.

In his response to the SOR, Applicant denied each of the allegations. He claimed that the listed debts were not his debts, and he did not omit debts belonging to him.

### **Findings of Fact**

Applicant is a 58-year-old lead engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR were denied by Applicant and placed in issue. Findings follow.

#### **Background**

Applicant married in August 1977 and has four children from this marriage, ages 36, 34, 26, and 13. (GEs 1-3) He earned a bachelor's degree in mechanical engineering in 1984 and a master's degree in chemical engineering in 2003. (GEs 1-3; Tr. 64-65) Applicant claimed no military service.

#### **Applicant's finances**

Applicant's credit reports reveal seven debts in Applicant's name, bearing his social security number. (GEs 4-6) He has the same first and last name as his oldest son

and believes these listed debts may belong to his eldest son. (Tr. 42-44) His credit reports list a local address where his son once resided, but Applicant never did. These reports list prior Marine Corps service, which his son completed. (GEs 3-6) Applicant by contrast never served in the Marine Corps. (GEs 1-3; Tr. 44) Applicant noted that he has never been a member of a military service credit union, and never had an account with a military service credit union. (Tr. 53) After further checks with the military service credit union holding the creditor 1.a account, he learned that the listed creditor had no record of any account in his name. (AE B; Tr. 44, 54-55)

Moreover, Applicant knew that his eldest son and his wife walked away from their mortgage during a difficult divorce. (Tr. 43) Applicant surmised that his son might have used his social security number to establish accounts in Applicant's name; however, he could not verify this. (Tr. 45)

Applicant assured, too, that he never took out any car loans with creditor 1.e, or any other car dealer, never signed for any parent student loans for his son, and never defaulted on his mortgage. (Tr. 42-52, 56-57, and 66-67) The only parental loan he obligated himself to repay was a parent's education loan for his daughter. (Tr. 50) For this loan, he co-signed an educational note on her behalf. (GEs 4-6) This loan remains in current status. (GEs 3-5, 7 and AEs F-G; Tr. 59-60)

Of the remaining debts listed in the SOR (i.e., those covered by subparagraphs 1.b-1-c and 1.e-1.g), Applicant could not identify any of them as debts belonging to him (Tr. 43-44) and obtained no identifying information from the listed SOR creditors he contacted. (Tr. 56) Further, none of the disputed debts listed in the SOR appear in any of the updated credit reports.

Questioned about his listed debts in the SOR by an agent of the Office of Personnel Management (OPM) in January 2014, Applicant could not identify any of the debts as his own. (GE 7; Tr. 42-44) He told the OPM agent (a) he had never been delinquent on his mortgage; (b) he co-signed student loans for his daughter, which became delinquent in 2009 and have since brought current; and (c) he could not recall any information pertaining to the remaining accounts inquired about by the agent. (GE 7)

Applicant believed at the time he talked to the OPM agent that the listed delinquent debts did not belong to him and "would be easily cleared up," because they were not properly assigned to their rightful owners. (Tr. 43-44, 58) When he did not receive any more feedback from DoD on these debts, he initiated contacts with the creditors individually. (Tr. 44)

Applicant's updated credit reports (AEs F-G) corroborate Applicant's consistent claims that none of the listed debts in the SOR belong to him. Without more evidence of the listed debts belonging to Applicant, no inferences can be reasonably drawn that link any of these listed debts to Applicant. He has never received any default notices from any of the creditors listed in the SOR or calls for collection, and upon closer assessment, the debts appear to be more likely linked to his eldest son.

## **E-QIP omissions**

In the e-QIP Applicant completed in November 2013, he did not disclose any debts within the past seven years that were turned over to a collection agency, were more than 120 days delinquent, or which are currently over 120 days delinquent. (GE 1) Applicant denied any knowing or wilful failure to disclose any delinquent debts and assured that none of the debts listed in the SOR are his debts. (Tr. 42-44) At best, the listed debts are disputed ones and do not reflect any attempt to falsify his e-QIP. Allegations of Applicant's falsifying his e-QIP are not proven and warrant favorable inferences.

## **Awards and endorsements**

Applicant is well-regarded by his supervisor who knows Applicant from his longstanding supervisory relationship with him. (AE C) Applicant's supervisor holds the former in high regard for his engineering abilities and personal integrity. (AE C)

## **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."

Each of these conditions 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.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. AG, ¶ 15.

### **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 reported history of delinquent debts. Applicant disputed each of the debts in the SOR and assures that none of the debts belong to him. Additional security concerns are raised over Applicant’s failure to disclose the listed debts in his e-QIP.

### **Financial considerations**

Applicant has consistently denied any ownership of the listed delinquent debts in the SOR. Based on information available to him, Applicant surmised that the disputed debts listed in the SOR belong to his oldest son. Based on the reported information supplied the credit reporting agencies, the evidence contained in the credit reports are enough to presumptively 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.

Credit reports do create presumptions of authenticity and accuracy. The Appeal Board has explained that credit reports can “normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations.” ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) The Government’s admitted credit reports bear both Applicant’s name and social security number and are entitled to some weight.

On closer analysis, though, these credit reports include identifying data (e.g., a local address of Applicant's son and listed Marine Corps service) that cannot be reconciled with Applicant's personal data history, but clearly cover identifying information pertaining to his eldest son. Applicant strongly disputes the listed debts and denies ever having credit relationships with any of the creditors listed in the credit reports produced at hearing. Applicant's most recent credit reports corroborate his claims: They reveal none of the creditors listed in the SOR and documented current status for each of the debts included in the reports.

Based on Applicant's credible showing, none of the listed debts in the SOR are proven to belong to him and cannot be attributed to him. Whether they belong to his oldest son is not definitely established, but highly likely, and the evidence is enough to at least foreclose any attribution of the debts to Applicant.

On the strength of the evidence presented, Applicant is entitled to the application of DC ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt [debts] 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." Applicant's evidence is highly probative of his consistent claims that the delinquent debts in issue do not belong to him.

Applicant's documented debt resolution steps taken to resolve the debts attributable to him in the SOR reflect satisfactory debt resolution in accordance with the criteria established by the Appeal Board for assessing an applicant's efforts to rectify his reported 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 actions enable him to refute the listed debts in the SOR as debts belonging to him.

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 who knows him and is impressed with his technical abilities and integrity. Addressing his finances, he has successfully rebutted the presumption of accuracy of delinquent debts revealed in an applicant's credit reports with persuasive probative evidence of his own. Applicant's updated credit reports reveal a respectable history of managing his own financial affairs, consistent with holding a security clearance. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

## **Personal conduct**

In Applicant's e-QIP answers, he did not disclose any debts within the past seven years that were turned over to a collection agency, were more than 120 days delinquent, or which are currently over 120 days delinquent. Applicant disputed all of the debts listed in the SOR, claiming none of them belonged to him. Based on the probative evidence he provided, the debts in issue are not attributable to him, and he cannot be faulted for failing to disclose them.

Applicant's overall honesty is demonstrated from a whole-person standpoint based on his own testimony and the corroborating testimony of his supervisor. Favorable conclusions are warranted with respect to the allegations contained under Guideline 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): FOR APPLICANT

Subparas. 1.a-1.g: For Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subpara. 2.a: 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



