



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-02034

Appearances

For Government: Phillip J. Katuaskas, Esquire, Department Counsel
For Applicant: *Pro se*

09/26/2014

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

History of the Case

On December 13, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the 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 January 17, 2014, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 25, 2014, and did not respond to the FORM. The case was assigned to me on September 12, 2014.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to timely file his federal income tax returns for tax years 2004 through 2012; (b) failed to timely file his state tax returns for tax years 2004 through 2012; (c) incurred an adverse judgment on a medical debt in June 2011 for \$13,043; (d) incurred an adverse judgment in June 2009 for \$3,482; (e) incurred an adverse common property owners association judgment in June 2010 for \$2,710; and (f) incurred an adverse judgment in September 2007 for \$3,613. Allegedly, each of the alleged adverse monetary judgments remain unpaid. (Item 1)

In his response to the SOR (Item 4), Applicant admitted the allegations covered by the SOR with explanations. He claimed he does not gamble or live beyond his means. He claimed his current salary is more than sufficient to meet his financial obligations. He claimed his failure to meet his obligations was due to grief and depression following his wife's death. He claimed his wife handled almost all of his financial activities. And he claimed he did not learn of his outstanding obligations until almost a year after her death.

Findings of Fact

Applicant is a 54-year-old communications engineer of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as a relevant and material finding. Additional findings follow.

Background

Applicant married his first spouse in December 1979 and divorced her in October 1992. (Item 5) He married his second spouse in November 1992; she passed away in June 2010. (Items 5 and 6) Applicant has no children from either marriage. Applicant earned college credits in 1978-1979 but no degree or diploma. (Item 5) He completed 20 years of active service in the Navy and was honorably retired. (Item 5)

Applicant's finances

Before her death in June 2010, Applicant's wife handled all of their finances and tax filings. (Items 4 and 6) Not until August 2011 did Applicant learn that his federal and state tax returns for tax years 2004 through 2012 had not been filed. (Items 4 and 6) He was similarly unaware that adverse judgments had been taken against him. Applicant has since filed all of his back federal returns, but has not filed state returns for the same back years. Afforded an opportunity to document his filing of his past state tax returns and judgment satisfactions, Applicant provided no documented filing or payment actions, or evidence of any disputed judgment debts covered in the SOR.

Endorsements

Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof 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 guidelines 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.

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 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.

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 his federal and state income tax returns and satisfy his four unpaid judgments. Applicant's recurrent problems with managing his finances over a considerable period of time reflect lapses of judgment in administering his financial responsibilities.

Applicant's pleading admissions of the delinquent tax filings and judgment debts covered in the SOR negate the need for any independent proof. See ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"). See, *generally*, *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's listed tax filing deficiencies and judgment debts are fully documented in his latest credit reports and provide ample corroboration of his filing lapses and debts.

While married to his second spouse, Applicant relied on his spouse to file his tax returns, pay his creditors, and manage his finances. Between 2004 and 2012, Applicant failed to timely file his 2004-2012 federal and state tax returns and address his debts. Citing his wife's health problems and ultimate demise in June 2010, he incurred four

separate adverse judgments (between 2007 and 2010). Not until after his wife passed away did he learn of his delinquent tax filings and adverse judgments. While he has since filed his overdue federal tax returns, he has provided no documentation of his filing his state returns and satisfying the outstanding judgments taken against him between 2007 and 2010.

With ample monetary resources at his disposal to monitor and satisfy any overdue tax returns and outstanding judgments, Applicant could be expected to make more concerted efforts to make sure his state tax returns were timely filed and his outstanding debts paid. 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 Federal, 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 explicit in cases involving debt delinquencies.

While potentially extenuating, Applicant's reliance on his wife to administer his finances are not sufficiently developed to definitively affix sole filing and payment responsibility on his wife, himself, or a combination thereof. This is especially true since his wife passed away in 2010 and he has had several years to show more progress in addressing his finances. As a result, neither MC ¶ 20(a), "the behavior happened a long time ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," nor 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," have any more than partial application.

Applicant's finances have been marked by recurrent periods of instability for a number of years and show insufficient signs of stabilizing. He still must address his back state income tax returns and outstanding money judgments before he can restore his finances to acceptable levels of stability commensurate with holding a security clearance. While Applicant has filed his federal taxes he has not addressed either his state taxes or outstanding judgments.

Full mitigation credit is difficult to establish with Applicant's history of total reliance on his expired spouse to manage his finances. Afforded opportunities to follow through in the filing of his state tax returns and satisfaction of his outstanding state income tax returns, Applicant has failed to document any follow-through on his state tax filings and judgment debts. His financial history reveals little attention to exploring payment initiatives before or after the issuance of the SOR.

While an applicant need not have paid every debt alleged in the SOR, the applicant needs to establish that there is a credible and realistic plan to resolve identified financial problems, accompanied by significant actions to implement the plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). While Applicant's addressing of his delinquent federal income tax returns is encouraging, his efforts to date do not reflect any headway with his remaining tax filing and judgment debts. More is needed of Applicant with the resources currently available to him.

From a whole-person standpoint, the evidence reveals recurrent lapses of judgment associated with Applicant's multiple failures to timely file his federal and state income tax returns and address his outstanding adverse money judgments. His partial mitigation efforts over the past year, while encouraging, are not enough to demonstrate a strong track record of timely tax filing and debt satisfaction.

Without any evidence of work performance or community and civic contributions to weigh and consider, there is little evidence in the record by which to make a whole-person assessment of Applicant's accomplishments in his business and personal life. Overall, Applicant's efforts to date are insufficient to meet mitigation requirements imposed by the AGs 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): AGAINST APPLICANT

Subpara. 1.a: For Applicant

Subparas. 1.b-1.f: 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

