



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06983

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

07/17/2017

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 December 30, 2015, 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 (Exec. Or.) 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, 2006.¹

Applicant responded to the SOR on March 15, 2015, and requested a hearing. The case was assigned to me on December 14, 2016, and scheduled for hearing on March 8, 2017. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and two exhibits (AEs A-B). The transcript (Tr.) was received on March 20, 2017.

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 individual payment plans with his listed SOR creditors. For good cause shown, Applicant was granted 14 days to supplement the record, Department Counsel was afforded two days to respond. Within the time permitted, Applicant furnished an outline of proposed payment plans with creditors 1.b, 1.f, 1.i, 1.k, and 1.q. Applicant's submission did not include any repayment plans or good-faith payments to any of his listed creditors. His submission was admitted without objections as AE C.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to timely file his federal and state income tax returns for tax years 2006-2012 and (b) incurred delinquent debts exceeding \$20,000 (including \$14,000 in student loan debts); and (c) filed for Chapter 13 bankruptcy relief in June 2004 (discharged in October 2005). Under Guideline E, the allegations covering SOR allegation ¶ 1.a were incorporated by reference.

In his response to the SOR, Applicant admitted most of the allegations with explanations. He claimed he filed his back tax returns for tax years 2006-2012 and took care of any amounts owing. He claimed that most of the covered debts were attributable to unemployment and medical issues. Further, he claimed he paid off all of the debts included in his June 2004 Chapter 13 bankruptcy petition. Applicant denied the allegations covered by SOR ¶ 1.c, claiming he has disputed this debt with the creditor for years.

Findings of Fact

Applicant is a 63-year-old information technology (IT) support technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR

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Effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position were established to supersede all previously issued national security adjudicative criteria or guidelines. Procedures for administrative due process for contractor personnel continue to be governed by DoD 5220.6, subject to the updated substantive changes in the guidelines, effective June 8, 2017.

and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married his first spouse in July 1991 and divorced her in October 1997. (GEs 1-2) He has two adult children from this marriage. He remarried in September 1996 and has three stepchildren from this marriage. (GEs 1, 5; Tr. 46) Applicant separated from his current spouse in April 2012 and lived apart for a number of years. (GEs 1- 2; Tr. 33) He has since reconciled with his current spouse in June 2016. (Tr. 33-34) While living apart from his current spouse, he fathered a child with another woman. (Tr. 45) Since reconciling with his wife, he disclosed his extramarital relationship with the other woman and his fathering of a child with this woman. (GE 2)

Between July 2009 and May 2013, Applicant attended classes at a local community college, but earned no degree or diploma. (GEs 1-2) He enlisted in the Army in July 1989 and served two years in the Inactive Reserve. (GE 1) Applicant received a general discharge in March 1991 for a pattern of misconduct. (Tr. 32)

Applicant has worked for his current employer since March 2014. (GEs 1-2) Between October 2005 and August 2013, he worked for another defense contractor as an IT specialist. (GE 1)

Applicant's finances

Applicant brings to these proceedings a considerable history of recurrent difficulties in managing his finances. Burdened with heavy credit card and student loan debts, he petitioned for Chapter 13 bankruptcy relief in June 2004. (GEs 1-5; Tr. 45) Upon satisfying the terms of his approved Chapter 13 plan, he received his discharge in October 2005. (GEs 2-5; Tr. 31)

Applicant failed to timely file federal and state income tax returns for tax years 2006-2012. (GE 2; Tr. 26, 41) With the help of his current spouse, he assured he filed his 2006-2012 tax returns in April 2013. (GEs 1, 5; Tr. 27-28, 34-35) His wife completed IRS-approved advanced exams in 2013, 2014, and 2015, and based on her IRS training, she appears to have been qualified to assist Applicant in his tax preparations. (AEs A-B) Applicant attributed his tax-filing failures to procrastination, immaturity, and money owed the IRS. (GE 2; Tr. 35-36) Applicant's filing assurances are not accompanied by any documentation and leave questions as to whether (a) the returns were filed voluntarily; (b) federal and state taxes were due; and (c) any payment guidelines imposed by the IRS and his state taxing authority were complied with. Without proper documentation (either at hearing or post-hearing), these questions cannot be answered with any degree of accuracy and reliability.

Afforded a post-hearing opportunity to document his filing of his federal and state tax returns for tax years 2006-2012 and any related filing and payment compliance

directives from the IRS, Applicant provided no records of his voluntarily filing any of his federal and state tax returns for tax years 2006-2012. He provided insufficient clarity either as to whether he or the IRS filed the returns for these tax years. (GEs 2-5)

Between 2009 and 2013, Applicant accumulated a number of delinquent debts. (GEs 2 and 5) His listed debts (16 in all) exceeded \$20,000. (GEs 2-5; Tr. 37-38) One of the debts (SOR debt ¶ 1.c for \$1,655) Applicant denied without any explanations. For those remaining debts that he admitted, he attributed them to a combination of unemployment, monthly child support payments, and the lack of financial means to service his debts. (GE 2; Tr. 37-38) Several of the listed debts student loan debts (SOR debts ¶¶ 1.m-1.o) exceeding \$14,000 that he has not been able to return to current or rehabilitation status. (GEs 2-5; Tr. 37-38) Applicant incurred these debts while attending college classes between July 2009 and February 2011. (GEs 3 and 5) Credit reports document that these defaulted loans were assigned to collection in February 2011. (GE 3)

Applicant listed some of his remaining debts he has looked into and claimed to have entered into payment plans with a number of the listed creditors. (AE C) Cited creditors he claims to have approved individual payment plans with are comprised of the following: creditors 1.b, 1.f-1.i, 1.k, and 1.q. However, Applicant provided no documentation of approved payment plans with any of these creditors. Without more probative evidence of approved payment plans and good-faith payments, Applicant cannot be credited with either payment plans or payments.

Applicant's remaining creditors not covered in his table of creditors with approved payment plans have not been addressed. SOR debt ¶ 1.c that Applicant disputes is not addressed with documented dispute corroboration (such as letters to the creditor and credit reporting agencies) and cannot be credited as a well-supported dispute. (GEs 2-5)

Endorsements

Applicant is well regarded by his program manager who vouched for Applicant's trustworthiness. (Tr. 49-50) It is unclear whether his program manager has any knowledge of the financial issues covered in this proceeding.

Policies

The new 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 conditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the conditions 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. The following AG ¶ 2(d) 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 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . . 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 failing to file federal and state tax returns for tax years 2006 through 2012, and his accumulating delinquent consumer and student loan debts exceeding \$20,000. Applicant's tax-filing lapses and incurred delinquent consumer and student loan debts warrant the application of four of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability to satisfy debts,” DC ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” DC ¶ 19(c), “a history of not meeting financial obligations,” and DC ¶ 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Because the allegations covered by Guideline F are incorporated in Guideline E, pertinent disqualifying conditions under Guideline E must be considered as well. Applicable disqualifying conditions consist of the following: DC ¶ 16(d)(3), “a pattern of dishonesty or rule violations.” Applicant's recurrent failure to timely file his federal and state tax returns over a seven-year period (2006-2012 tax years) reflect a pattern of rule violations that are disqualifying.

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 multiple failures to file his federal and state tax returns for tax periods 2006-2012 and accumulation of delinquent consumer and student loan debts without (a) good corroborative evidence of his filing his back tax returns as claimed and (b) addressing his delinquent debts, merit no 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances." Applicant provided no probative evidence of financial hardships that would justify (a) his failing to timely file his federal and state tax returns for the seven years in issue, or (b) his failing to address his SOR consumer and student loan debts in a responsible way.

To date, Applicant has not documented his voluntarily filing any of his federal and state tax returns for tax years 2006-2012 that he claimed to have filed in April 2013. Nor has he provided evidence of his being in compliance with IRS filing and payment arrangement criteria in any verifiable ways. Further, he has not provided any documentary proof of his addressing his listed consumer and student loan debts.

Because Applicant has not developed any verifiable evidence of his addressing his back federal and state tax returns for the years in issue, or addressed his delinquent consumer and student loan debts, application of MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," and MC ¶ 20(g), "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements," are not available to Applicant. Prospects for his obtaining the necessary filing and payment documentation in the foreseeable future are uncertain and difficult to gauge. Likewise, potential mitigating conditions covered by Guideline E are not available to Applicant.

The timing of filing of federal and state tax returns in DOHA proceedings is critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's tax-filing lapses and insufficient debt repayment actions with the resources available to him prevent him from meeting the Appeal Board's requirements for demonstrating financial stability. 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's limited attention devoted to addressing his 2006-2012 federal and state tax returns and delinquent consumer and student loan debts over an extended number of years reflect poorly on his judgment and willingness to follow IRS and state rules and regulations.

The favorable impressions Applicant has forged with his program manager are notable and worthy of praise and encouragement. They are not enough at this time, however, to overcome security concerns associated with his history of failing to file his federal and state tax returns for the years in issue (i.e., 2006-2012), or establish a meaningful track record of paying his listed consumer and student loan debts. See ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)(internal citations omitted). More time is needed for Applicant to demonstrate his reliability and trustworthiness in meeting IRS and state laws and regulations governing tax filings and payments of his accrued consumer and student loan debts.

Considering all of the circumstances surrounding Applicant's tax filing and payment delinquencies on his consumer and student loan debts, his actions to date in addressing his finances are insufficient to meet mitigation requirements imposed by the guideline governing his finances. No different conclusions would result under the AGs in place prior to June 8, 2017. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a-1.r of Guideline F and incorporated subparagraph 1.a of 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): AGAINST APPLICANT

Subparas. 1.a-1.r:	Against Applicant
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GUIDELINE E (PERSONAL CONDUCT) AGAINST APPLICANT

Subpara. 2.a:	Against Applicant
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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

