



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00602

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro Se*

03/23/2017

Decision

WESLEY, Roger C., Administrative Judge:

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

History of Case

On August 17, 2015, The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOHA 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 (Exec. Or.), *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on October 23, 2015, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 17, 2016, and he submitted additional information within the 30 days permitted. Applicant's post-FORM submission was admitted without objection as Item 7. The case was assigned to me on November 2, 2016. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) filed for Chapter 7 bankruptcy protection in August 1998 (discharged in December 1998), (b) accumulated 14 delinquent debts, exceeding \$15,000, and (c) was verbally counseled on three occasions by his employer for failing to pay his corporate credit card as required. Allegedly, the listed delinquent debts remain outstanding.

In his response to the SOR, Applicant admitted his bankruptcy filing and discharge and all of the listed debts with explanations. He claimed he filed for Chapter 7 bankruptcy in 1998 after fracturing three vertebrae in his back that prevented him from working for close to two years. He claimed he incurred medical debts and unemployment associated with a routine colonoscopy in 2012 that was complicated by a perforated colon that required repairs. Applicant claimed that the surgeon declined to cover the resulting medical bills that his surgeon declined to cover. While accepting responsibility for his delinquent debts, he attributed his late payments on his employer's corporate credit card to a combination of late per diem reimbursement from his employer and his struggling finances.

Findings of Fact

Applicant is a 62-year-old roofing and waterproofing technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in May 1980 and divorced in February 1994. (GEs 2-3) He has one adult child from this marriage. He remarried in June 1996, divorced in June 2000, and has one step-child from this marriage. (GEs 2-3) He remarried again in January 2001 and divorced in January 2011. (GEs 2-3) He has not pursued any advanced education credits within the past ten years and has never served in the military. (GE 2)

Applicant has worked for his current employer since March 2014 as a contract roofing and waterproofing technician. (GEs 2-3) Previously, he was self-employed as a roof and building consultant between March 2013 and March 2014. (GEs 2 and 3)

Between February 2008 and March 2013, Applicant worked as a roof consultant for a defense contractor. Before that (between November 2007 and February 2008), he was self employed as a roof and building consultant. (GEs 2 and 3)

Finances

Applicant's finances deteriorated in 1996 and 1997 following his divorce from his first spouse. Records confirm that he petitioned for Chapter 7 bankruptcy protection in August 1998 and received his discharge in December 1998. (Items 1-3)

In 2012, Applicant underwent a routine colonoscopy. (Items 1 and 7) Because of surgical complications, he suffered collateral injury and could not work for over a year. (Item 7) He incurred major medical bills in connection with his colonoscopy that his insurance carrier did not cover. (Items 3 and 7). Disputes with his treating physician over who should bear the financial burden of the medical bills were unsuccessful, and Applicant fell behind in his medical payments.

Applicant incurred a number of delinquent debts between 2012 and 2013. (Items 3-6) Applicant's listed debts are comprised of the following: SOR debt ¶ 1.b (\$6,698); SOR debt ¶ 1.c (\$3,398); SOR debt ¶ 1.d (\$2,398); SOR debt ¶ 1.e (\$615); SOR debt ¶ 1.f (\$370); SOR debt ¶ 1.g (\$340); SOR debt ¶ 1.h (\$50); SOR debt ¶ 1.i (\$314); SOR debt ¶ 1.j (\$416); SOR debt ¶ 1.k (\$200); SOR debt ¶ 1.l (\$281); and SOR debt ¶ 1.m (\$347).

Additionally, records confirm that Applicant was verbally counseled by his previous employer on three occasions between 2008 and 2013 for failing to timely pay his corporate credit card account as required. (Item 3) Applicant attributed one of his late payments to his employer's late reimbursements of his travel expenses and his remaining late payments to his ongoing struggles with his finances. (Item 3) Applicant paid off the balance of his travel bill in two installments: one in March 2013 and another in November 2013. (Item 3)

To date, Applicant has not addressed most of his listed medical and consumer debts that he can substantiate, and they remain outstanding. (Items 3 and 5-7) He attributed his delinquent debts to recurrent unemployment between 2013 and 2014. (Items 1, 3, and 7) Since returning to full-time employment in March 2014, he has made few documented efforts to address his delinquent debts. Only his SOR ¶ 1.k debt has been satisfied. (Items 3-7)

Endorsements

Applicant is well regarded by Air Force (AF) engineers who have worked closely with him on joint roofing projects. (Item 7) One AF engineer familiar with Applicant's roofing design and production skills credited him with superb technical skills that he put to excellent use in his quality designs for medical facilities. (Item 7)

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 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.

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 *Kungys v. United States*, 485 U.S. 759, 792-800 (1988).

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

Applicant is a roofing and waterproofing technician for a defense contractor who accumulated a number of delinquent debts during recurrent periods of unemployment while recovering from colonoscopy complications. His accumulation of delinquent debts between 2013 and 2014 and his failure to address these debts after returning to full-time employment in March 2014 warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and ¶ 19(c) "a history of not meeting financial obligations."

Applicant's pleading admissions of the debts covered in the SOR negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's listed debts are fully documented in his latest credit reports and provide ample corroboration of his debts.

Judgment problems persist, too, over Applicant's incurred delinquencies and his failure to demonstrate he acted responsibly in addressing most of his listed debts once the unemployment conditions that contributed to the delinquencies had passed or eased, and his finances had improved. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are most of his listed debt delinquencies ongoing, but he has failed to address all but one of them (i.e., the debt covered by SOR ¶ 1.k). Mitigation credit is not available to Applicant based on the evidence developed in this record.

Holding a security clearance involves a fiduciary relationship between the Government and the clearance holder. Quite apart from any agreement the clearance holder may have signed with the Government, the nature of the clearance holder's duties and access to classified information necessarily imposes important duties of trust and candor on the clearance holder that are considerably higher than those typically imposed on Government employees and contractors involved in other lines of Government business. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Based on the documented materials in the FORM, some extenuating circumstances are associated with Applicant's inability to pay off or otherwise resolve his debts. Available to Applicant is 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." Because Applicant has not taken more responsible steps in resolving his delinquent debts covered by ¶¶ 1.b-1.m, the second prong of MC ¶ 20(b) is not available to him. Nor are his explanations sufficient to warrant application of any of the other mitigating conditions covered by Guideline F.

By contrast, Applicant's furnished explanations concerning his verbal counseling on the three occasions he was late in paying his corporate credit card are credible and sufficient to conclude he mitigated the late payment allegations contained in SOR ¶ 1.n. Applicant provided probative evidence of his satisfying the amounts owing on his corporate credit card in two installments in March 2013 and November 2013, respectively, and is no longer indebted to his former employer.

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts and failure to address them once he returned to full-time employment. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

While medical complications and related unemployment played a major role in his accumulation of delinquent debts, Applicant failed to provide sufficient explanatory information about his inability to address his debts after he returned to full-time employment in March 2014. Applicant's favorable endorsement from the AF engineer who worked closely with him speaks well of his demonstrated technical skills, work ethic, and dependability. The endorsement is not enough, however, to overcome judgment concerns associated with his failure to make more documented progress in addressing his delinquent debts after he returned to full-time employment in 2014.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his lack of sufficient proof of corrective actions taken to address his old debts after returning to full-time employment, it is still too soon to make safe predictive judgments about Applicant's ability to repay his debts and restore his finances to stable levels commensurate with the minimum requirements for holding a security clearance. Unfavorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.j, 1.l and 1.m. Applicant is entitled to favorable conclusions with respect to the allegations covered by SOR ¶¶ 1.k and 1.n.

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

Subparagraphs 1.a through 1.j and
1.l-1.m.

Against Applicant
For Applicant

Subparagraphs 1.k and 1.n:

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

