



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00950

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

03/31/2017

Decision

WESLEY, Roger C., Administrative Judge:

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

History of Case

On August 23, 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 (Exec. Or.) 10865, *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 January 15, 2016, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on April 5, 2016, and did not respond with any post-FORM information. The case was assigned to me on February 6, 2017. 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 13 bankruptcy relief in September 2011 (discharged in October 2014) and (b) later accumulated three delinquent debts (inclusive of mortgage, student loan, and car loan debts) exceeding \$407,000 in the aggregate. Allegedly, these incurred debts remain outstanding.

In his response to the SOR, Applicant admitted most of the listed debts with explanations, denying only the allegations covered by SOR ¶ 1.d. He claimed the house debt covered by SOR ¶ 1.b was part of his Chapter 13 petition, and his house was subsequently foreclosed and auctioned. He claimed his student loans are currently being paid back bi-monthly through payroll deduction. And he claimed his car loan was included in his chapter 13 petition and paid off at case closure, with the car being sold and title released.

Findings of Fact

Applicant is a 42-year-old network planning engineer 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 December 1999 and has two children from this marriage, ages 13 and 11. (Item 3) He earned his bachelor's degree in August 1996 from a recognized university and his master's degree in March 2006 from another university. (Items 3 and 8) Applicant served five years of active military duty as an Army officer between August 1996 and September 2001. (Item 3) He received an honorable discharge in September 2001.

Applicant has worked for his current employer as a network engineer since August 2006. Between January 2003 and August 2006, he worked as a network engineer. And between February 2002 and January 2003 he worked as a network engineer for other firms. (Items 3 and 8)

Finances

Applicant filed for Chapter 13 bankruptcy in September 2011 and self-reported his bankruptcy filing to his facility security officer (FSO) in October 2011. (Item 4) His Chapter 13 bankruptcy was discharged in October 2014. (Items 2, 5, and 8) The trustee's final report and account revealed total assets of \$31,308 and net payments to

scheduled creditors of \$33,489. (Item 5) Trustee compensation totaled \$3,489. (Item 5) His scheduled debts had become delinquent in 2011, and he chose to file for Chapter 13 relief on the advice of his attorney. (Item 5) His petition did not include his student loans.

Of the three debts included in the SOR, Applicant claimed that two of them (SOR debts ¶¶ 1.b and 1.d) were included in his Chapter 13 bankruptcy and paid off. (Item 2) He provided no documentary proof that the debts were scheduled and paid despite afforded opportunities to do so. Nor did he provide any proof of bi-weekly payroll deductions covering his SOR creditor ¶ 1.c student loan debt.

To date, Applicant has not addressed any of his listed debts covered by SOR debts ¶¶ 1.b-1.d that he can substantiate, and they remain outstanding. (Items 5-8) Detailed explanations of the circumstances of how his listed debts with creditors 1.b-1.d arose, and his home mortgage ended in foreclosure and public sale of the property are also missing from Applicant's September 2012 interview with an agent of the Office of Personnel Management (OPM), and from his answer.

Applicant provided no evidence of budgeting, financial counseling, or proof of community and civic contributions. Character references and performance evaluations were not provided either.

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 network planning engineer for a defense contractor who accumulated a number of delinquent debts (including a mortgage debt and student loan debt) that he has not substantively addressed. After being discharged from his Chapter 13 bankruptcy, the three listed debts listed in his credit report continue to be reported as delinquent and outstanding. Applicant’s accumulation of delinquent debts and his failure to address these debts 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 unexplained delinquencies and his failure to demonstrate he acted responsibly in addressing his listed debts with the resources available to him with his full-time employment since 2006. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only are his listed debt delinquencies ongoing, but he has failed to address them in any tangible way. Extenuation and mitigation credit are 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).

Whole-person assessment does not enable Applicant to surmount the judgment questions raised by his accumulation of delinquent debts and failure to address them with any documented proof and detailed explanations of the circumstances surrounding the accrual of his debts and the foreclosure of his home mortgage. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

Evidence of budgeting, financial counseling, endorsements, performance evaluations, and civic contributions might have been helpful in making a whole-person assessment of his overall clearance eligibility, but were not provided. Overall, clearance eligibility assessment of Applicant based on the limited amount of information available for consideration in this record does not enable him to establish judgment and trust levels sufficient to overcome security concerns arising out of his accumulation of delinquent debts.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his lack of sufficient explanations for his debt accruals, and his failure to provide any proof of corrective actions taken to address his old debts, it is still 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 SOR ¶¶ 1.b through 1.d. Favorable conclusions are warranted regarding the allegations covered by SOR ¶ 1.a.

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 through 1.d:	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

