



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01241

Appearances

For Government: Carroll J. Connelley, Esquire, Department Counsel

For Applicant: *Pro se*

08/21/2017

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 September 3, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why the DOD 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 for Determining Eligibility for Access to Classified Information*

(AGs) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.¹

Applicant responded to the SOR on September 16, 2015, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on May 9, 2016, and did not respond to the FORM with objections or supplemental information.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated eight delinquent debts, exceeding \$20,000. Allegedly, the listed delinquent debts remain outstanding.

In his response to the SOR, Applicant admitted several of the listed debts with explanations. He claimed the admitted debts will be paid. He denied most of the alleged debts, claiming these debts were paid in full years ago. (SOR debts ¶¶ 1.e and 1.g-1.h)

Findings of Fact

Applicant is a 37-year-old ship fitter 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 2010 and has one daughter and three stepchildren. He earned an Associate's degree in 2007. (Items 2-3) He reported no military service.

Since September 2012, Applicant has been employed by his current contractor. (Items 2-3) Between September 2008 and September 2012, he was employed as a security guard for a non-DOD security service.

Finances

While in college between August 2005 and July 2007, Applicant financed his education with student loans. Altogether, Applicant accumulated \$28,000 in student loans (inclusive of accrued interest). Most of these student loans were paid. Credit reports reveal he defaulted on one of his student loan accounts (SOR ¶ 1.e) This student loan fell into default in November 2009, and was charged off by the creditor

¹ 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 supercede 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. Application of the AGs that were in effect as of the issuance of the SOR would not change the decision in this case.

and assigned for collection to SOR creditor ¶ 1.e in September 2012. (Items 4-5) To date, Applicant has not addressed any of his listed creditors or supplied explanations for why he has not contacted any of his listed SOR creditors or provided any persuasive explanations for why he has failed to do so. (Items 2-3)

Besides his student loan debts, Applicant incurred a number of delinquent consumer debts. Credit reports reveal that between 2011 and 2012, Applicant accumulated seven delinquent debts exceeding \$5,000. He has not addressed any of these debts to date that he can document, and they remain outstanding. (Items 3-5)

Applicant provided no evidence of financial counseling, developing a budget, or completing a personal financial statement. Nor did he furnish any character references, performance evaluations, or evidence of community contributions and civic involvement.

Policies

The SEAD 4, App. A, lists new AGs 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 conditions that could raise a security concern and may be disqualifying if any, and many of the conditions that could mitigate security concerns.

These AGs 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(d) 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(d) 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 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 and 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, 509-11 (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

Applicant is a ship fitter for a defense contractor who accumulated a number of unexplained delinquent debts. His accumulation of delinquent debts between 2007 and 2009 and his failure to address these debts in a timely way warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), “inability to satisfy debts;” DC ¶19 (b), “unwillingness to satisfy debts regardless of the ability to do so, and DC ¶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 before receiving the SOR in April 2015. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004). Not only have most of his listed debt delinquencies been ongoing before the issuance of the SOR in 2015, but he failed to address them until after his receipt of the SOR.

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 Snapp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Based on the documented materials in the FORM, no extenuating circumstances can be traced to Applicant’s historical inability to pay off or otherwise resolve his student loan and other listed debts. Unavailable 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 under the circumstances.”

Since receiving the SOR, Applicant has taken no responsible steps in resolving his delinquent debts covered by ¶¶ 1.a-1.h. Mitigation credit is unavailable to Applicant based on the evidence developed in this record.

Whole-person assessment does not enable Applicant to surmount raised security concerns over his finances. Because Applicant did not submit any evidence of financial counseling, developing a budget, and other measures designed to assist him in addressing his debts, considerations that might help to mitigate his failure or inability to address his debts cannot be considered. Whole-person assessments are intended to consider not only the developed adverse information covered in the SOR, but other information as well about the applicant’s professional and personal history to reach an overall assessment of security clearance eligibility. Such whole-person

considerations cannot be factored in to mitigate the adverse information covering Applicant's finances.

Taking into account all of the documented facts and circumstances surrounding Applicant's debt accumulations, his lack of documented evidence of corrective actions to address his listed delinquent debts, and the absence of sufficient whole-person considerations to surmount financial concerns, overall conditions at this time preclude making safe predictive judgments about Applicant's ability to repay his remaining 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.h

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.h:	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

