



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01531

Appearances

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

05/16/2017

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 September 29, 2015, the 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 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.

Applicant responded to the SOR on March 29, 2016, and requested a hearing. The case was assigned to me on August 12, 2016 and initially scheduled for hearing on October 25, 2016. Hearing was continued and rescheduled for October 27, 2016.

At the hearing, the Government's case consisted of eight exhibits (GEs 1-8). Applicant relied on one witness (himself) and four exhibits (AEs A-D). The transcript (Tr.) was received on November 8, 2016.

Procedural Issues

Before the opening of the hearing, Applicant's facility security officer (FSO) confirmed Applicant's separation from his sponsor that was noted in Joint Personnel Adjudicative System (JPAS) in May 2016 due to the sponsor's loss of its DOD contract. His current employer assumed his previous employer's DOD contract and the company's sponsorship of Applicant for a security clearance

Applicant's current FSO confirmed Applicant's current employer's sponsorship of Applicant for a security clearance, which is noted in JPAS. (Tr. 10-11) With these confirmations, DOHA's jurisdiction is retained.

Prior to the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with payment updates regarding his student loan debts. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded three days to respond.

Within the time permitted, Applicant provided documentation of a payment agreement with SOR creditors 1.a-1.b and 1.d-1.e covering Applicant's monthly payment obligations under his agreement. Applicant's post-hearing submission was admitted without objection as AE E.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four delinquent student loan debts exceeding \$17,000 and eight delinquent consumer debts exceeding \$7,000. Allegedly, these debts remain outstanding.

In his response to the SOR, Applicant admitted most of the alleged debts with explanations. He claimed he has been in contact with some of the listed creditors and has made, or will be making, arrangements with the creditors. And he claimed one of the debts (SOR ¶ 1.f for \$732) has been paid in full; while another debt (SOR ¶ 1.c) is disputed.

Findings of Fact

Applicant is a 31-year-old installer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated as relevant and material findings. Additional findings follow.

Background

Applicant has never married and has four children from prior relationships for whom he provides child support. (GEs 1 and 5) He co-habited with a woman beginning in August 2013, but no longer does so. (Tr. 17)

Applicant attended vocational classes at a technical institute between September 2009 and September 2010, but did not earn a diploma or certificate of completion. (GEs 1 and 5) He reported no military service. He has worked for his current employer as an installer since April 2014. (GE 5) Between April 2013 and April 2014, he worked for other non-DOD employers in painter and installer capacities. (GEs 1 and 5) He reported unemployment between January 2013 and March 2013 and worked for other employers as a painter between June 2002 and December 2012. (GE s 1 and 5; Tr. 42-43)

Applicant's finances

Between 2009 and 2015, Applicant accumulated a number of student loan and consumer debts associated with his attendance at a vocational school. (GEs 1-5; Tr. 30-33) His student loans became delinquent after he left school and could not afford to make his monthly payments. (GE 5) His student loan debts currently exceed \$17,000

Besides his student loan debts, Applicant incurred delinquent consumer debts exceeding \$7,000. (GEs 2-5) Applicant attributed his debt delinquencies to overextending himself and failing to maintain better control of his finances. (GE 5) He accepts full responsibility for his debts and his failure to address them.

Applicant has since addressed some of his listed delinquent accounts. He provided documentation of a payment agreement with SOR creditor 1.I that reflects a present balance of \$670.54, a considerable reduction from the reported balance in his most recent credit reports. (GEs 2-4 and AE A; Tr. 20) He also documented his satisfaction of his SOR ¶ 1.f account. (AE B; Tr. 21)

Applicant completed a repayment agreement with his student loan lender in September 2016. (AEs C and E) The agreement calls for payment of an enrollment fee, payable in three equal installments of \$199 in connection with his outstanding student loans totaling \$18,725. (AEs C-D; Tr. 21) Before entering into this installment agreement with his student loan lender, Applicant had no established payment track record. (GEs 2-5 and AE E; Tr. 27-28) While he documented his three installment payments covering his enrollment fee, he did not provide any evidence of his following through with any loan payments under the agreement. (Tr. 24) Although his credit reports confirm that he made some payments on his student loans in 2014, these reports do not reveal any other loan payments made in 2015 and 2016. (GEs 2-4; Tr. 24-25) Whether applicant's student loans have been returned to current or rehabilitation status under his new installment agreement with his student loan lender is unclear.

Applicant's remaining consumer debts remain outstanding as well. SOR debts ¶¶ 1.c (\$3,177); 1.g (\$631); 1.h (unspecified); 1.i (\$1,071); 1.j (\$300); and 1.k (\$217) have not been addressed to date by Applicant. (Tr. 28-40) When asked about these debts in a prior interview with an agent of the Office of Personnel Management (OPM) in September 2014, and at hearing, Applicant acknowledged these accounts and his lack of any actions to address them. (GE 5; Tr. 30)

Applicant makes \$22.40 an hour from his current job as an installer. (Tr. 41) He has not pursued financial counseling, and has not developed a budget to date. Nor has he explored debt consolidation. (GE 5; Tr. 43) Further, he provided no character references, performance evaluations, or evidence of community and civic contributions.

Policies

The 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 "[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. The following AG ¶ 2(a) 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 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. 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 accumulation of delinquent student loan and consumer debts over a number of years between 2009 and 2015. His student loans have been delinquent since 2015, and only recently have been addressed in his 2016 installment agreement. And his consumer debts have been only partially addressed with his payments on his SOR ¶ 1.i debt and his payoff of his SOR ¶ 1.f debt. His history of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations.”

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.

Extenuating circumstances are limited in Applicant’s case. While he had periods of unemployment in the past, they have been brief. Since March 2013, he has been fully employed, albeit in relatively low-paying jobs. He attributed most of his delinquencies to overextending himself and failing to maintain his finances in a responsible way. Further, since returning to work, he has not addressed his consumer debts responsibly, or established a meaningful track record with his student loan repayment agreement. Considering all of Applicant’s circumstances, they merit no more than minimal 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.”

Few mitigating conditions apply to Applicant’s situation. While his installment agreement with his student loan creditor shows promise, it is not accompanied by any meaningful track record of principal and interest payments pursuant to the agreement. Mitigation credit for repayment efforts requires probative evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. See ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004)(quoting ISCR Case No. 99-9020 at 5-6 (June 4, 2001). Applicant has not satisfied his burden of proof of producing evidence of a good track record of addressing his delinquent debts. Because he has not developed any verifiable evidence of meaningful repayment of his SOR-listed creditors, application of MC ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is very limited. Prospects for his following up on his overdue student loan principal and interest

payments and other listed debts are uncertain and difficult to gauge at this time. Furthermore, Applicant has provided no probative evidence of financial counseling or reasonable basis for disputing any of the debts he does not recognize. None of the other mitigating conditions apply to Applicant's situation.

From a whole-person standpoint, Applicant's limited efforts to date in addressing his student loans and consumer debts while fully employed reflect poorly on his judgment. Afforded opportunities to address his listed SOR debts during and after the hearing, he provided little evidence of any inability to achieve more substantial progress with his debts over the past three years. While he provided proof of his satisfying the enrollment fees conditioned in his student loan agreement, he provided no evidence of further progress on his loans and remaining consumer debts, and still retains delinquent debts that exceed \$23,000. Whole-person assessment of Applicant's clearance suitability is further weakened by the absence of evidence of endorsements, personnel evaluations, and proofs of community and civic contributions.

Considering all of the circumstances surrounding Applicant's accumulations of student loan and consumer debt delinquencies and his limited initiatives to date in addressing his finances, his overall efforts in restoring his finances to stable levels consistent with holding a security clearance are insufficient to meet mitigation requirements imposed by the financial considerations guideline. Unfavorable conclusions are warranted with respect to the allegations covered by SOR ¶¶1.a through 1.e, and 1.g through 1.k. of Guideline F. Favorable conclusions are warranted with respect to the allegations covered by SOR ¶¶ 1.f and 1.l.

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

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| Subparagraphs. 1.a-1.e and 1.g-1.k: | Against Applicant |
| Subparagraphs. 1.f and 1.l: | For 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

