



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02415

Appearances

For Government: Ross Hyams, Esq., Department Counsel

For Applicant: *Pro se*

10/12/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated security concerns regarding his finances. Eligibility for access to classified information is granted.

History of the Case

On October 7, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators 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, *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 for Determining Eligibility for Access to Classified Information (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on November 13, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on January 14, 2016, and responded to the FORM within the time permitted with documentation of payments to creditors 1.a, 1.b, 1.d, 1.e, and 1.f. Applicant's submissions were admitted as Items 8-16. The case was assigned to me on April 22, 2016.

Summary of Pleadings

Under Guideline F, Applicant allegedly accrued (a) a judgment against him in November 2011 that remains unpaid and (b) accumulated five delinquent debts exceeding \$17,000. Allegedly, each of the listed delinquent debts remains outstanding.

In his response to the SOR, Applicant denied the allegations and attached documentation of payments he claimed were made to five of the creditors and the release of the judgment covered by subparagraph 1.c. He provided no further explanations of his payments or how the payments are related to the specific debts listed in the SOR.

Findings of Fact

Applicant is a 56-year-old electronics technician for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in May 1986 and has no children from this marriage. (Item 3) He earned an associate's degree in May 1981 and claims no military service. (Items 3 and 5)

Applicant has worked for his current employer since April 2006 as an electronics technician. Previously, he was employed by other defense contractors as an electronics technician.

Finances

Between 2010 and 2012, Applicant and his wife encountered financial difficulties in keeping up with their bills. (Items 5 and 8). Applicant attributed his financial problems to overspending, bad decisions, and providing financial assistance to his parents. (Items 5 and 8)

In August 2010, Applicant and his wife collectively decided to enlist the assistance of a debt consolidation service. (Items 5 and 8) Between September 2010 and 2015, they remitted \$1,450 a month to the debt consolidation firm. Records document that the firm was successful during this time in negotiating payment

reductions with many of his scheduled creditors, but not with creditor 1.c who obtained a judgment in November 2011 for \$12,301. (Items 2 and 5)

Garnishment proceedings were started by creditor 1.c but suspended after Applicant remitted two payments of \$56 each and committed to meeting his monthly payment obligations. Applicant documented creditor 1.c's release of judgment in April 2015 following an acknowledged settlement of the judgment debt. (Item 2) This judgment did not include settlement of the listed 1.a debt. The creditor 1.c debt covered by the judgment has an assigned account number ending in a number that differs from the one covering the listed creditor 1.a debt for \$5,876. (Item 7)

Afforded an opportunity to respond to the FORM, Applicant documented his settlement of the creditor 1.a debt as well with a confirming letter from the creditor in February 2016 acknowledging its receipt of Applicant's \$1,400 payment in April 2015 and informing Applicant that the debt was settled in full for less than the full balance. (Item 16)

Applicant's remaining delinquent debts are comprised of the following: a charged-off debt to creditor 1.b (\$5,374); a debt placed in collection with creditor 1.d (\$89); a charged-off debt with creditor 1.e (\$1,361); and a charged off debt with creditor 1.f (\$5,020). Documented settlements of each of these debts have been supplied by Applicant with his post-FORM submissions. Applicant's creditor 1.b debt was discharged in October 2015 with a \$2,600 settlement payment. (Item 13) The balance of the debt was cancelled by creditor 1.b, who issued a 1099-C cancellation of debt notice. (Item 14) Applicant also documented his payment of the creditor 1.d debt and received a confirmation of payment in January 2015. (Item 15)

Further, Applicant documented his satisfaction of the creditor 1.e debt with an accepted payment (\$844) for less than the amount due in March 2012. (Item 12) And he documented his satisfaction of a reported account with a listed account number that differs from the other accounts identified with the same creditor in Applicant's provided pleading attachment and credit reports. (Items 2, 6-7) So, too, the creditor 1.d account number differs from the debt with the account number supplied by Applicant and cannot be reconciled. (Items 2 and 5)

In his response to the SOR, Applicant claimed that his creditor 1.e account was transferred to another collection agency. This pleading claim could not be initially verified by any of the credit reports or furnished attachments. The listed debt amount of \$1,361 for the creditor 1.e debt varied considerably from the \$1,431 claimed amount owing on the attached debt settlement summary provided by Applicant as an attachment to his SOR response. (Item 2) With his post-FORM submissions, he was able to clear up this inconsistency with a documented settlement in full of the debt with an accepted payment (\$844) for less than the amount due in 2015. (Item 12)

Finally, with his post-FORM submissions, Applicant was able to document his satisfaction of his creditor 1.f debt with an accepted payment of \$1,755 in full settlement

of the debt. (Item 11) With the settlement of his creditor 1.f debt, Applicant is credited with resolving all of his listed debts in the SOR.

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."

The 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(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.

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 guideline is 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.

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 fully employed electronics technician for a defense contractor who incurred a judgment debt of \$12,301 and five delinquent consumer debts exceeding \$17,000 over a five-year period spanning 2010 and 2015. Applicant's collective accumulation of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines. DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶19(c), "a history of not meeting financial obligations," apply to Applicant's situation.

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).

Inferentially, Applicant's delinquent debts are attributable for the most part to his acknowledged overspending, bad decisions, and providing financial assistance to his parents. Based on the documented materials furnished by Applicant in his FORM response and his post-FORM submissions, some extenuating circumstances are associated with Applicant's furnished financial assistance to his parents. Partially 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 under the circumstances."

Applicant has since resolved all of his debts with his listed creditors with settlement acceptances. Each of the entered settlements are documented in Applicant's attachments and his post-FORM submissions. Applicant resolved his debt delinquencies without any documented financial counseling assistance. MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is fully applicable to Applicant's situation.

Whole-person assessment enables Applicant to surmount the judgment questions raised by his accumulation of delinquent consumer debts (including the creditor 1.c debt reduced to judgment). His resolving his debts through negotiated settlements reflects positively on his renewed commitments to paying his debts. Resolution of his listed delinquent accounts is a critical prerequisite to his regaining control of his finances.

Taking into account all of the documented facts and circumstances surrounding Applicant's accrual of delinquent debts and his recent success in resolving his debts with negotiated settlements, Applicant mitigated financial concerns. Favorable conclusions warrant with respect to the allegations covered by subparagraphs 1.a through 1.f.

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): FOR APPLICANT

Subparas. 1.a through 1.f:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

