



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02482

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel

For Applicant: *Pro Se*

03/31/2017

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 October 27, 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 10865 (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.

Applicant responded to the SOR on January 14, 2016, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on March 2, 2016, and did not submit any post-FORM information. 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) incurred two judgments: one in December 2013 in the amount of \$11,444 and another in December 2007 for \$8,503 and (b) accumulated 21 delinquent debts, exceeding \$24,000. Allegedly, both the judgments and the listed delinquent debts remain outstanding.

In his response to the SOR, Applicant admitted most of the listed debts. He denied the allegations covered by SOR ¶¶ 1.b, 1.e, 1.g, 1.i, 1.k, 1.q, 1.s, and 1.u with brief explanations. He claimed he paid off a number of his accounts (five altogether, totaling under \$400) and disputed three of them (i.e., SOR ¶¶ 1.c, 1.e, and 1.g) for reasons they had been taken off his credit report.

Findings of Fact

Applicant is a 38-year-old pipe 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 August 2001 and divorced in October 2011, subject to finalizing the decree. (Items 5 and 8) He has no reported children from this marriage. He earned his General Education Degree (GED) in June 2008. (Items 5 and 8) He has not pursued any advanced education credits within the past ten years and has never served in the military. (Items 5 and 8)

Applicant has worked for his current employer since November 2012 as a pipe fitter. (Items 5 and 8) He reported unemployment between September 2012 and November 2012. Between May 2004 and August 2012 he was employed as a locomotive engineer, and between August 2001 and May 2004, he worked as a plumber. (Items 5 and 8)

Finances

Between May 2007 and December 2012, Applicant accrued a number of delinquent debts. Altogether, he accumulated 23 delinquent accounts exceeding \$43,000. These accounts were referred to collection and remain unsatisfied. Two of the accounts (i.e., creditors 1.o, and 1.p) were reduced to judgments. (Items 6-8) Listed delinquent accounts from 2012 and 2013 that are still in collection are comprised of the following: SOR debt ¶ 1.a (\$6,395); SOR debt ¶ 1.b (\$924); SOR debt ¶ 1.c (\$818); SOR debt ¶ 1.d (\$759); SOR debt ¶ 1.e (\$743); SOR debt ¶ 1.f (\$644); SOR debt ¶ 1.g

(\$469); SOR debt ¶ 1.h (\$320); SOR debt ¶ 1.i (\$140); SOR debt ¶ 1.j (\$136); SOR debt ¶ 1.k (\$136); SOR debt ¶ 1.l (\$91); SOR debt ¶ 1.m (\$48); debt ¶ 1.r (\$91); SOR debt ¶ 1.n (\$21); SOR debt ¶ 1.q (\$95); SOR debt ¶ 1.r (\$91); SOR debt ¶ 1.s (\$419); SOR debt ¶ 1.t (\$5,765); SOR debt ¶ 1.u (\$211); SOR debt ¶ 1.v (\$5,433); and SOR debt ¶ 1.w (\$2,348)

Applicant attributed most of his listed debts to poor money management and placing too much reliance on his ex-wife to pay the bills and manage his finances. She failed to pay the bills according to Applicant. The circumstances surrounding his incurred debts were not fully explained by Applicant and are lacking in details.

One of Applicant's debts (creditor 1.a) resulted from a car repossession. (Item 8) Applicant co-signed with his ex-wife for the vehicle they purchased for \$21,000 in 2003. (Items 6-8) Following the repossession of the vehicle in February 2006, a deficiency balance remained in the amount of \$6,395. Neither Applicant nor his ex-wife ever paid the deficiency balance, and the debt remains outstanding.

Applicant purchased a motorcycle in April 2005 for \$8,775. (Items 6-8) When he fell behind with the payments, creditor 1.t repossessed the motorcycle and billed Applicant for the \$5,760 deficiency balance. (Items 6-8) Applicant has not addressed this deficiency balance, and the debt remains outstanding. (Items 6-8)

Another repossession resulted from Applicant's failure to maintain payments on home furnishings he purchased on an installment agreement he arranged in May 2006 with creditor 1.v. (Items 7-8) Following creditor 1.v's repossession of the furniture, a deficiency balance remained in the amount of \$5,433. (Item 7) Applicant furnished no evidence of his addressing this deficiency, and it remains outstanding. (Items 7-8)

Applicant could not provide any specifics of the entered judgments covered by creditors 1.o and 1.p in his January 2013 interview with an investigator of the Office of Personnel Management (OPM). (Item 8) These judgments remain outstanding. He provided no documentation either to corroborate his disputes of the debts he challenged in the SOR as not his. Nor did he furnish any evidence of the debts he claimed to have paid. He is entitled to credit for the debt covered by SOR ¶ 1.k for the reason that the debts listed in SOR ¶¶ 1.j and 1.k appear to be duplicates.

Applicant did not provide any evidence of financial counseling or budgeting. Nor did he provide any endorsements, 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 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 pipe fitter for a defense contractor who accumulated a number of delinquent debts (including two judgments) that he attributes in part to a brief period of unemployment in 2012. His accumulation of delinquent debts between 2007 and 2012 and his failure to address these debts after returning to full-time employment in November 2012 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 partially 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 them. Applicant is entitled to credit for only one debt

(creditor 1.k, which is an apparent duplication of the creditor 1.j debt. Mitigation credit for the remaining debts listed in the SOR 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, few extenuating circumstances are associated with Applicant's inability to pay off or otherwise resolve his debts. Available in part 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.a-1.j and 1.l-1.w, 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.

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 the resources available to him from his longstanding full-time employment. Resolution of his delinquent accounts is a critical prerequisite to his regaining control of his finances.

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. Because Applicant did not submit any favorable character references, performance evaluations, or evidence of community and civic contributions, favorable whole-person considerations cannot be factored into an overall assessment of Applicant's trustworthiness and reliability.

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 and 1.l through 1.w. Applicant is entitled to favorable conclusions with respect to the allegations covered by SOR ¶ 1.k.

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 through 1.w.

Subparagraph 1.k:

Against Applicant

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

