



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02770

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

12/07/2016

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 November 9, 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 January 30, 2016, and requested a hearing. The case was assigned to me on June 17, 2016, and was scheduled for hearing on August 4, 2016. At the hearing, the Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on August 16, 2016.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with payment documentation with respect to creditors 1.d, 1.e, and 1.g. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond.

Within the time permitted to supplement the record, Applicant timely provided documentation of his payoffs of his creditor 1.b, 1.c and 1.g debts. Applicant's post-hearing submissions were admitted without objection as AEs A-B. He did not provide any updated payment information pertaining to creditors 1.d and 1.e.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred an adverse judgment in 2008 in the amount of \$13,194 and (b) accumulated six debts exceeding \$12,000. Allegedly, these debts remain outstanding.

In his response to the SOR, Applicant admitted all but one of the listed debts. He denied that the creditor 1.e debt is still outstanding, claiming it was paid by his wife in 2009. Applicant claimed that he is making payments to satisfy the taxes debt owed to creditor 1.d, the Internal Revenue Service (IRS). And he claimed the creditor 1.g debt was paid in full.

Findings of Fact

Applicant is a 53-year-old information technology (IT) support specialist for a defense contractor who seeks a security clearance. The admitted allegations covered in the SOR that were admitted by Applicant are adopted as relevant and material findings. Allegations denied by Applicant are placed in issue. Findings follow.

Background

Applicant married in June 1989 and has an adult stepson from this marriage. (GE 1) He earned a high school diploma in May 1980, but claims no post-high school educational credits. He enlisted in the Air Force in March 1987 and served 11 years of active duty before receiving an honorable discharge in March 2008. (GE 1)

Applicant has worked for his current employer as an IT support specialist since November 2012. (GE 1) Previously, he worked as a computer technician for a defense contractor (between May 2010 and November 2010). He reported unemployment

between May 2010 and November 2010 and federal employment between January 2010 and May 2010. (GE 1) While Applicant claims no need for a security clearance for his job, his employer continues to sponsor him for a clearance. He held several security clearances while in active-duty military status but has not held a clearance since his discharge from active duty military service in 2008. (Tr. 24)

Applicant's Finances

Applicant accumulated a number of delinquent debts between 2006 and 2015. (GEs 2-5) He incurred two federal tax liens against him in September 2011. One lien covers federal taxes in the amount of \$5,022. (GEs 3-5; Tr. 28) This lien remains unsatisfied and unreleased. (GEs 3-5) He incurred a second federal tax lien in September 2011 in the amount of \$1,650. (GE 5) Credit records reveal that this tax lien was released in February 2013. (GE 5)

Addressing the IRS debt (creditor 1.d), Applicant explained that this tax debt covers owed taxes accrued between 2008 and 2012. (Tr. 28) He attributed his tax debts to his wife's not paying any taxes due on her disability benefits. (Tr. 29-30) He assured he has a payment plan in place with IRS and paid down the creditor 1.d debt from \$11,000 to a little over \$5,000 and is still paying \$200 a month to the IRS. (Tr. 28-29) By his own accounts, he still has a \$5,000 balance owed the IRS. (Tr. 30-31, 36)

Applicant is current with his federal taxes for tax years 2014 and 2015. (Tr. 30), but uncertain whether he owes any back taxes for tax year 2013. (Tr. 30) Credit reports reveal that of the two liens filed by the IRS in 2011, one (the smaller of the two) was released and presumably satisfied in February 2013. (GE 5; Tr. 31)

Besides his federal tax liens, Applicant accumulated delinquent consumer debts with creditor 1.a (\$595), creditor 1.b (\$136), creditor 1.c (\$90); 1.e. (\$13,194), creditor 1.f (\$2,873), and creditor 1.g (\$953). (GEs 2-5) Court records document that creditor 1.e reduced its debt to a default judgment in August 2008. Combining principal and added pre-judgment interest, court costs, and imposed attorneys fees, the presiding court entered a judgment in the aggregate amount of \$13,994. (GE 2) While Applicant was uncertain whether this judgment debt was discharged in his wife's bankruptcy (Tr. 21-23), he could provide no written proof of bankruptcy discharge of this debt. (Tr. 25) Without evidence of discharge of the debt in his wife's bankruptcy, the creditor 1.e judgment debt cannot be considered satisfied or resolved based on the evidence developed in the record.

By the close of the hearing, delinquent debts owed to creditors 1.a-1.c and creditors 1.f-1.g had not been addressed by Applicant. (Tr. 25-27) He expressed interest at hearing in paying these debts once he realized how serious the delinquencies were to his security clearance application. (Tr. 27) His post-hearing submissions did not include any documentation of his addressing these debts, and they remain unresolved.

In his post-hearing submissions, Applicant documented his payoffs of several of his smaller listed creditors in the SOR. His exhibits confirmed his payoffs of his creditor 1.b, 1.c, and 1.g creditors. (AEs A-B) These payments cover payoff of three listed debts totaling \$1,179. These payments represent a very small percentage of Applicant's overall delinquent debt accruals and still leave his major debts unresolved..

Applicant nets \$3,500 a month. (Tr. 39) With her disability income, his wife earns about \$1,100 a month. (Tr. 40) Applicant has \$10,000 in his 401(k) retirement account. (Tr. 41) His monthly out-of-pocket expenses approximate \$2,871, which leave him with a monthly remainder of around \$2,500 net after payroll deductions and his out-of-pocket expenses. (Tr. 42-43)

Endorsements

Applicant provided no endorsements or performance evaluations. Also, he did not provide any evidence of civic or community 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."

Each of these conditions 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 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. . . . 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 Executive Order 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 history of delinquent debts that Applicant accumulated between 2006 and 2015, most of which have not been materially addressed. Afforded a post-hearing opportunity to address his remaining debts, Applicant provided documentation of his payoffs of three smaller debts covered by the SOR (i.e., debts owed to creditors 1.b-1.c and 1.g).

Of the listed debts covered in the SOR, Applicant admitted all but one of them with some clarifying explanations. Based on the reported information supplied by Applicant and the credit reporting agencies, the evidence is sufficient to 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.”

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 implicit in financial cases.

Applicant’s delinquent debts were reported in a credit report issued in October 2015. Credit reports do create presumptions of authenticity and accuracy. The Appeal Board has explained that credit reports can “normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations.” ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010) Except for the three debts (i.e., debts 1.b-1.c and 1.g) paid off in 2016, Applicant has not addressed any of his debts listed in the SOR before or after the hearing.

Applicant’s accumulation of delinquent debts, inclusive of the three debts he resolved after the hearing, merit only partial 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.” Financial hardships associated with his wife’s disability and his brief period of unemployment in 2010 are extenuating to a degree, but are not supported by enough corrective efforts on Applicant’s part to justify the full application of MC ¶ 20(b). Considering Applicant’s level of sustained full-time employment since November 2012 and the significant monthly remainder he estimated in his hearing testimony, manifestly he has the apparent resources available to him to make more payment progress to date than he has demonstrated.

None of the remaining mitigating conditions covered by Guideline F are fully available to Applicant. His financial problems are still relatively recent, and he has not developed concrete plans for addressing his remaining debts. While an acceptable payment plan need not include documented proof of satisfaction of every listed debt, it should reflect an established plan to resolve his financial problems and significant actions taken to implement that plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008)(citations and quotations omitted.) This Applicant has not demonstrated to date with his proofs. So, while his expressed intentions to pay his individual creditors are encouraging, they do not equate to the kind of meaningful track record necessary to meet minimum Appeal Board criteria for stabilizing an applicant's finances.

Considering all of the circumstances in the record surrounding Applicant's debts and efforts to address them, neither MC ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;" MC ¶ 20 (c), "the person is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;" nor MC ¶ 20(e), "the person has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue," apply to Applicant's situation.

Applicant's repayment efforts have been very limited, and are not enough to enable him to take more than partial advantage of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." While Applicant's payoffs of his creditor 1.b-1.c and creditor 1.g debts are encouraging, more is needed to satisfy Appeal Board criteria for developing a meaningful track record of debt reduction and payment plans for addressing still unresolved debts. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

From a whole-person standpoint, Applicant provided no endorsement letters or performance evaluations to evaluate in evaluating Applicant's overall trustworthiness, reliability, and judgment. Nor did he furnish any evidence of civic and community contributions to help mitigate concerns over the handling of his finances. His efforts to date in addressing his debts are not enough to satisfy Appeal Board criteria for demonstrating the level of good judgment, reliability, and trustworthiness required for holding a security clearance.

More payment progress is required of Applicant to demonstrate he has stabilized his finances. Unfavorable conclusions are warranted with respect to SOR allegations 1.a and 1.d-1.f. Favorable conclusions are warranted with respect to allegations 1.b-1.c and 1.g of the guideline.

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

Subparas. 1.a and 1.d-1.f:	Against Applicant
Subparas. 1.b-1.c and 1.g:	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

