



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 15-03338

Appearances

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

03/06/2017

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 January 17, 2016, 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 the DoD on September 1, 2006.

Applicant responded to the SOR on April 26, 2016, and requested a hearing. The case was assigned to me on August 12, 2016, and was scheduled for hearing on October 25, 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 November 1, 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 documented payments of SOR ¶¶ 1.a, 1.e, 1.g, and 1.h. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded three days to respond. Applicant did not supplement the record with any documented evidence.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated seven delinquent debts exceeding \$12,000 and (b) incurred a judgment against him in 2005 for \$886. Allegedly, these debts remain outstanding.

In his response to the SOR, Applicant admitted two of the alleged debts: SOR ¶¶ 1.a and 1.c. He denied the allegations pertaining to SOR ¶¶ 1.b and 1.d-1.h. He claimed that the accumulated debts became delinquent while he was unemployed. For those debts he denied, he will be disputing the covered charges with the credit bureaus. And he claimed he paid the imposed traffic fine alleged in SOR ¶ 1.h. in connection with his reported May 5, 2005 traffic citation.

Findings of Fact

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

Background

Applicant never married and has no children. He earned a high school diploma in June 2000 and claims no college credits. Applicant never served in the military. (GE 1) Applicant has worked for his current employer since August 2014. (GEs 1 and 5) Previously, he worked for another employer between October 2011 and August 2014. Between March 2010 and July 2011, he was unemployed. (GE 1; Tr. 47)

Applicant's finances

Between 2005 and 2012, Applicant accumulated a number of delinquent debts. Some of these debts were attributable to periods of unemployment. Others resulted from disagreements with creditors and a co-tenant over payment responsibilities. Based on the

information supplied by his credit reports, he incurred delinquent debts (inclusive of a judgment covered by SOR ¶ 1.d) as follows: SOR debt ¶ 1.a (\$152); SOR debt ¶ 1.b (\$696); SOR debt ¶ 1.c (\$89); SOR debt ¶ 1.d (\$886); SOR debt ¶ 1.e (\$185); SOR debt ¶ 1.f (\$10,881); SOR debt ¶ 1.g (\$353); and SOR debt ¶ 1.h (\$611). (GEs 2-5; Tr. 21-23)

To date, Applicant has provided no documentary evidence addressing any of his SOR debts. While he disputed several of the debts on grounds that some do not belong to him (e.g., the SOR ¶ 1.b debt based on his claim of misuse of his credit card by a family member) and others he cannot identify, he provided no written evidence to document his disputes. (GE 5; Tr. 22) His largest debt is a delinquent rental balance on an apartment unit that Applicant shared with a roommate between 2008 and 2010. (GEs 2-3 and 5)

In his interview with an investigator from the Office of Personnel Management (OPM) in December 2014, Applicant told the investigator that for those debts he could not identify, he would research them and pay them once he confirmed they belonged to him. (GE 5) Because Applicant did not provide any evidence to document the debts he paid and those he disputes in the SOR, there is no practical way of documenting those he paid and those subject to good-faith disputes. Applicant's accumulated debts remain unsatisfied and unresolved at this time. (GEs 2-5)

Applicant did not provide any evidence of financial counseling or budgeting. Nor did he furnish any 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 debts (inclusive of an adverse judgment covered by SOR ¶ 1.d) To date, Applicant has failed to provide any documentary proof of his addressing any of the listed debts.

Applicant’s accumulated adverse judgment and delinquent debts in issue 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.

Applicant’s accumulation of delinquent debts, inclusive of one judgment, merit only limited application of any of the mitigating conditions. His extended periods of unemployment between 2010 and 2011 account for some of his problems in meeting his financial obligations and entitle him to some 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.” Because he provided no evidence of his addressing his identified debts after he returned to gainful employment in October 2011, he cannot satisfy the condition in MC ¶ 20(b) that he acted responsibly under the circumstances.

Without more documented information about his delinquent debts and corrective steps he has taken to mitigate the Government’s financial concerns, Applicant cannot demonstrate the level of financial progress required to meet the criteria established by

the Appeal Board for assessing an applicant's efforts to rectify his poor financial condition with responsible efforts considering his circumstances. See ISCR Case No. 08-06567 at 2-3 (App. Bd. Oct. 29, 2009). Applicant's lack of documented repayment actions of his own with the resources available to him prevent him from meeting the Appeal Board's requirements for demonstrating financial stability. ISCR Case No. 07-06482 (App. Bd. May 21 2008); see ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999).

From a whole-person standpoint, Applicant has provided no evidence of demonstrated efforts to date to address and resolve his debt delinquency problems and provided no evidence of character references, performance evaluations, or community and civic contributions. Based on the information provided, a whole-person assessment of Applicant's overall trustworthiness is quite limited. It does not entail much weight to his work experience, community and civic involvement, and management of his debts. More substantial than any credit he is entitled to as an experienced customer contact representative of his employer are the judgment lapses he exhibited in his handling of his finances.

Considering all of the circumstances surrounding Applicant's payment delinquencies (including the creditor 1.d judgment), Applicant's actions to date in addressing his delinquent debts are insufficient to meet mitigation requirements imposed by the guideline governing his finances. Unfavorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.h. of Guideline 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): AGAINST APPLICANT

Subparas. 1.a-1.h:

Against 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

