



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03404

Appearances

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

01/11/2017

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 March 24, 2016, 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 April 12 2016, and was scheduled for hearing on October 26, 2016. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on November 4, 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 satisfaction of the creditor 1.b judgment. For good cause shown, Applicant was granted 14 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) failed to file his federal income tax returns for tax years 2008 through 2011; (b) incurred an adverse consumer judgment in 2010 for \$5,223; (c) accumulated four delinquent consumer and medical debts exceeding \$500; and (d) accrued \$1,585 in delinquent mortgage payments.

In his response to the SOR, Applicant admitted his failure to file federal tax returns for tax years 2008-2011, as required. He claimed his federal tax filings are current. He denied the allegations in SOR ¶¶ 1.c-1.g, claiming the debts were either paid or brought current.

Findings of Fact

Applicant is a 45-year-old electrician 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 married in May 1998 and has one son from this marriage. (GE 1) He attended on-line education classes between February 2009 and March 2013 and earned a certificate in basic hypnosis in December 21, 2016. He claimed no military service. (GEs 1, 6) Applicant has worked for his current employer since November 2001. (GE 1) Previously, he was president of his own company. (GEs 1, 6)

Applicant's finances

Applicant failed to file his federal tax returns for tax years 2008 through 2011.(GEs 2-6) He provided no documentation of his filing his federal tax returns for these back years during the intervening years, or since the hearing was conducted (GEs 2-6; Tr. 19-20); even though he assured the agent in his interview with an investigator from the Office

of Personnel Management (OPM) in May 2013 that he would file his back tax returns for tax years 2008-2011. (GE 6)

Applicant attributed his failures to file his 2008-2011 federal tax returns to (a) his belief that he did not owe any taxes for those years and (b) he was too busy with other matters. (Tr. 20-23) He explained that he has never had a tax year between 2008 and 2011 when he owed any federal taxes and never received any tax notices from the Internal Revenue Service (IRS) before or since 2011. (Tr. 21-22) Afforded opportunities at both his hearing and after the hearing to supplement the record, Applicant provided no documentation of his filing federal tax returns for tax years 2008-2011. (Tr. 24-28)

In 2010, he incurred an adverse judgment in the amount of \$5,223 from creditor 1.b. Applicant provided no documentation of his satisfying this judgment during the hearing or in the time permitted to supplement the record. (Tr. 19-20) This judgment debt remains outstanding. (GEs 2-6; Tr. 25-27)

Besides the adverse judgment debt, Applicant accumulated a number of delinquent consumer debts with the following creditors: creditors 1.c (\$31); creditor 1.d (\$207); creditor 1.e (\$135); creditor 1.f (\$217); and creditor 1.g (\$1,585). Applicant provided no documentation of his addressing these debts with payoffs, payment plans, or good-faith disputes. (GEs 2-6; Tr. 28-34) Applicant's SOR ¶¶ 1.b-1.g remain unsatisfied and unaddressed in any verifiable way. Applicant did not provide any character references or evidence of community and civic contributions to be considered along with evidence of his mismanaging his finances.

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 history of failing to file federal tax returns for tax years 2008 through 2011; his incurring an adverse judgment in 2010 against him; and his accumulation of other delinquent debts. To date, Applicant has failed to provide any documentary proof of his filing his back tax returns for the years in issue.

Applicant’s tax-filing lapses, accumulated adverse judgment, and delinquent consumer and medical debts in issue warrant the application of three of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability or unwillingness to satisfy debts,” DC ¶ 19(c), “a history of not meeting financial obligations,” and DC ¶ 19(g), “failure to file Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

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 tax-filing problems and accumulation of delinquent debts, inclusive of one judgment, merit no application of any of the mitigating conditions. He provided no proof of extenuating circumstances associated with his failure to file federal income tax return for tax years 2008-2011, or his accruing an adverse judgment and other consumer debts between 2006 and 2013.

Without more documented information about his tax filing lapses and 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 federal tax filings for tax years 2008-2011 and 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 tax filing lapses and debt delinquency problems and provided no evidence of endorsements and community and civic contributions. Based on the information provided, a whole-person assessment of Applicant's overall trustworthiness can take into consideration his work experience and his administering to tax filings and debts. More substantial than the credit he is entitled to as experienced electrician are the judgment elapses he exhibited in his handling of his finances.

Considering all of the circumstances surrounding Applicant's tax filing lapses and payment delinquencies (including the creditor 1.b judgment), Applicant's actions to date in addressing his finances 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.g. 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.g:

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

