



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03589

Appearances

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

01/23/2017

Decision

WESLEY, Roger C., Administrative Judge:

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

Statement of Case

On February 4, 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 DoD on September 1, 2006.

Applicant responded to the SOR on March 21, 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 three exhibits (AEs A-C). 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 payments to SOR creditors 1.a-1.b and SOR creditors 1.d through 1.f. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded three days to respond.

Within the time permitted, Applicant supplemented the record with documented payments on his SOR creditors 1.a and 1.b debts and payoffs of his SOR creditors 1.d-1.f debts. Applicant's submissions were admitted without objection as AEs D-F.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated six delinquent debts exceeding \$18,000. Allegedly, each of the debts remains delinquent.

In his response to the SOR, Applicant admitted most of allegations with explanations. He admitted the SOR creditor 1.a-1.b debts, claiming he fell behind on making payments due to unemployment issues and is in the process of satisfying these debts. He admitted his SOR creditor 1.d and 1.e debts, attributing the debts to unemployment and claiming these debts will be paid off within the ensuing months. Applicant denied the SOR creditor 1.c and 1.f debts, claiming both debts have been paid.

Findings of Fact

Applicant is a 51-year-old senior system engineer of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted are incorporated herein. Additional findings will follow.

Background

Applicant married in May 1985 and divorced his spouse in December 2015. (GE 1; Tr 36) He has two adult children from this marriage. (GE 1) He earned a high school diploma but no college degree or diploma within the past 20 years. (GE 1) Applicant enlisted in the Army June 1985, served seven years of active duty, and received his honorable discharge in September 1992. (GE 1)

Applicant has worked for his current employer since October 2014 as a senior system engineer, and between September 2008 and November 2010 for the same employer. (GE 1). Between October 2010 and October 2014, he worked for another

contractor as a senior telecommunications technician (except for a brief three-month period in 2012 when he was laid off). Applicant has held a security clearance on and off since 1987. (Tr. 36)

Applicant's finances

Applicant accumulated a number of delinquent debts during a period of unemployment in 2012. (GEs 2-5) He accrued six delinquent debts as follows: SOR creditors 1.a (\$7,091); 1.b (\$6,361); 1.c (\$3,910); 1.d (\$429); 1.e (\$236); and 1.f (\$629) between 2012 and 2013. Altogether, Applicant accrued over \$18,000 in delinquent debts. (GEs 2-5) He attributed his delinquent debts to unemployment following a layoff from a previous employer in 2012. (GE 5; Tr. 36-37)

Applicant attributed his delinquent accounts to a combination of providing financial assistance to his children attending college, overextending, and his diminished income (taking a pay cut of almost \$20,000 a year) following his 2012 layoff. (GE 5; Tr. 36)

Applicant's SOR 1.a and 1.b creditors involve two credit card accounts with the same creditor that became delinquent after Applicant was laid off for a brief period in 2012. (GEs 1 and 5) When he tried to resume his payments on these credit cards in October 2012 after returning to work, he received no response from the creditor and made no further repayment efforts until after he received the SOR in February 2016. (AEs A and E; Tr.)

In his interview with an investigator of the Office of Personnel Management (OPM) in January 2015, Applicant confirmed the credit card accounts with the creditors listed in the SOR. (GE 5) He assured the OPM investigator that he would follow up with the accounts identified as delinquent intended

Applicant has since paid off three of the SOR debts. He documented his payments of the following SOR debts: his SOR ¶ 1.c debt with a \$3,910 payment in 2011 (GEs 2-3 and 5; Tr. 37-39, 48-56); his SOR ¶ 1.d debt with a \$429 payment in October 2016 (AEs B and F); and his SOR ¶ 1.f debt with a \$629 payment in October 2016. (AEs D and F)

Applicant has a joint payment plan with SOR creditors 1.a and 1.b and documented his payment plan of September 2016 that calls for payments of \$177 a month, to be deducted from his bank account on the 15th of each month until the credit card debts are paid. (AEs A and E)

Only Applicant's SOR creditor 1.e remains unresolved, and this debt no longer appears on Applicant's credit report. (AE F) Applicant could not identify the creditor ¶ 1.e debt, and believes it could be covered by the creditor ¶ 1.d debt. (Tr. 41-43, 59-60)

Applicant did not provide any endorsements or performance evaluations. Evidence of charitable and civic contributions to his community are not available either for weighing.

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 accruing delinquent accounts with his listed creditors in the SOR. All of his listed debts, except one (SOR ¶ 1.e) have either been paid off or are covered by a repayment plan. His history of delinquent debts 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 attributed his delinquent debts to a combination of providing financial assistance to his children attending college, overextending, and his diminished income following his 2012 layoff. His problems merit 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." Since his return to full-time employment following his 2012 layoff, Applicant's finances have improved considerably. Most importantly, he has paid three of his listed debts and has a payment plan in place with two of the remaining debts. Only the \$236 debt covered by SOR ¶ 1.e remains unresolved.

Because Applicant has resolved (either by payoffs or payment plan) all of the listed SOR debts, except for one small account, with verifiable evidence, application of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is fully available to him. Prospects for his maintaining his finances in stable condition are good and leave no reasonable doubts of recurrent financial difficulties.

Applicant's repayment efforts to date are fully consistent with 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 insufficient efforts taken to pay or otherwise resolve his remaining debts 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 sufficient evidence of the payment of his delinquent accounts once he returned to full employment status to demonstrate his seriousness about restoring and maintaining his finances in stable order. His concerted repayment efforts merit crediting him with demonstrating the levels of trustworthiness and reliability required to meet minimum security clearance eligibility criteria.

Considering all of the circumstances surrounding Applicant's delinquent debt accruals and sufficient efforts to address them, his actions to date in addressing his finances are enough to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by subparagraphs 1.a through 1.f 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): FOR APPLICANT

Subparas: 1.a-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

