



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-06746

Appearances

For Government: Phillip K. Katauskus, Esq., Department Counsel

For Applicant: *Pro se*

10/17/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding Applicant's finances. Eligibility for access to classified information is denied.

Statement of Case

On March 16, 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 (Exec. Or.) 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

¹ Applicant's response included an attachment certifying a change of first and middle names to the ones included in the caption above. The court-approved name change became effective April 6, 2016.

amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new guidelines apply to all adjudicative decisions on or after June 8, 2017. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs. Application of the AGs that were in effect as of the issuance of the SOR would not affect my decision in this case.

Applicant responded to the SOR on June 16, 2016, and elected to have the case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 12, 2016 and did not object to any of the exhibit items in the FORM or provide supplemental information. The exhibits in the FORM were admitted.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated eight delinquent debts (mostly student-loan debts) exceeding \$22,000. Allegedly, these debts remain outstanding.

In Applicant's response to the SOR, Applicant admitted all of the allegations with explanations. Applicant claimed the student-loan lenders increased monthly payments from \$100 to \$200 at a time when Applicant's part-time employment did not produce enough income to cover the lender's payment increases. Applicant further claimed that the assignee of the loans has since sold the loans and has not to date notified Applicant of its assignment. Also, Applicant claimed that the private lender of one of the listed student-loan debts (SOR ¶ 1.h for \$797) agreed to a payment plan (date not mentioned).

Findings of Fact

Applicant is a 26-year-old civilian employee of 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. (Item 5) Applicant earned a high school diploma in May 2009 and attended college classes between September 2009 and December 2011. Applicant reported no military service. (Item 5)

Applicant has worked for the listed current contractor since March 2015. (Item 5) Between August 2008 and March 2015, Applicant worked for other employers in various jobs. (Item 5) Applicant reported recurrent periods of unemployment between September

2013 and November 2014, between November 2010 and September 2012, between May 2009 and September 2010, and between September 2005 and August 2008. (Item 5)

Applicant's finances

While attending college classes between September 2009 and December 2011, Applicant's funded the classes with government-guaranteed student loans exceeding \$20,000 and a private student loan of \$797. (Items 4-8) Unable to find full-time employment after leaving college, Applicant defaulted on the government-guaranteed student loans (SOR debts ¶¶ 1.b-1.g) These loans remain outstanding. Addressing the private student loan (SOR debt ¶ 1.h), Applicant claimed to have an approved payment plan with the lender. Absent documentation of a payment plan in force, Applicant cannot be credited with having a plan in effect as claimed.

Besides having delinquent student loans, Applicant accumulated a delinquent consumer debt of \$894 (SOR debt ¶ 1.a). Applicant provided no documentation of paying or otherwise resolving this listed debt, and this debt, too, remains outstanding.

Applicant did not provide any evidence of budgeting or financial counseling. Nor did Applicant furnish character references, performance evaluations, or evidence of community involvement.

Policies

The SEAD 4, App. A lists 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 conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions 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 App. A. 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 App. A, AG ¶ 2(d) 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 App A, AG ¶ 2(d) 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable 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 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 student loans and a consumer debt. Applicant’s accumulation of multiple delinquent student loan debts and a delinquent consumer debt warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19 (b), “unwillingness to satisfy debts regardless of the ability to do so”; and 19(c), “a history of not meeting financial obligations.”

Applicant’s pleading admissions with respect to his accumulation of delinquent student loan and consumer debts negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant’s delinquent consumer debts are fully documented in the credit reports and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in such persons. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Whether Applicant has reduced the amount owing on any of the listed SOR debts remains unclear. For Applicant provided no documentary evidence of debt payments or resolution by other means. Without substantiating evidence of payment or resolution of the debts covered in the SOR, drawn conclusions are warranted that Applicant has not addressed any of the listed SOR debts by any documented means.

Applicant provided no documented evidence of extenuating circumstances, good-faith payments or payment plans, financial counseling, or reasonable disputes with any of the listed SOR debts. Based on the evidence provided, none of the mitigating conditions pertaining to evidenced good-faith payment initiatives, extenuating circumstances, financial counseling, or reasonable basis to dispute a past-due debt, apply to Applicant’s situation.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)

(internal citations omitted). In Applicant's case, Applicant's lack of demonstrated responsible efforts in addressing the SOR-listed student loan and consumer obligations preclude favorable findings and conclusions with respect to Applicant's security clearance application. 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. Nov. 29, 2005)).

Whole-person assessment is unfavorable to Applicant. To date, Applicant has shown insufficient progress in addressing the listed delinquent student loan and consumer debts covered in the SOR. Applicant's actions reflect a lack of financial responsibility and judgment and raise unresolved questions about trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. More documented information about Applicant's inability to pay or otherwise resolve the listed delinquent student loan and consumer debts and demonstrate financial progress is necessary to mitigate financial concerns under the financial guideline and consideration of the whole-person.

Taking into account all of the documented facts and circumstances surrounding Applicant's student loan and consumer debt accruals that have yet to be addressed in any substantive way, Applicant has failed to demonstrate enough probative efforts to mitigate financial concerns. Conclusions are warranted that Applicant's finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Unfavorable conclusions are entered with respect to the allegations covered by subparagraphs 1.a through 1.h of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is not consistent with the national interest.

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-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 eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

