



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06774

Appearances

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

10/13/2017

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 his financial problems. Eligibility for access to classified information is denied.

Statement of Case

On May 15, 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 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Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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, effective June 8, 2017. 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 8, 2016, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on August 8, 2016. He did not object to any of the exhibit items in the FORM or provide supplemental information.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated (a) delinquent federal tax debts totaling \$22,110 for tax year 2011 and (b) two delinquent consumer debts totaling \$941. These alleged debts remain outstanding.

In his response to the SOR, Applicant denied SOR debt ¶ 1.a, claiming he has reduced the past-due balance to \$16,440 under a payment plan he established with the Internal Revenue Service (IRS). Disputing SOR debts ¶¶ 1.b-c, he claimed he paid these debts.

Findings of Fact

Applicant is a 35-year-old multimedia program analyst 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 June 2008 and has one child (age 5) from his marriage. (Item 3) He reported no education credits or military service. Applicant has worked for his current contractor since August 2014. (Item 3) Between January 2005 and August 2014, he worked for non-DOD employers in various jobs.

Applicant's finances

Applicant incurred a federal-tax debt in 2011 in the amount of \$22,110. (Items 4-6) He claimed he has since reduced the account balance on this tax debt, but provided no documentation verifying his claim. Besides the federal-tax debt, Applicant accumulated two delinquent consumer debts totaling \$941. (Items 4-6). He furnished no evidence of his addressing either of these debts either.

Applicant provided no evidence of budgeting or financial counseling. Nor did he 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 accrual of delinquent federal taxes for tax year 2011 and accumulation of two delinquent consumer accounts. Applicant's accumulation of delinquent federal taxes for tax year 2011 and his accumulation of delinquent consumer debts warrant the application of four 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"; 19(c), "a history of not meeting financial obligations"; and 19(f), "failure to file or fraudulently filing annual Federal, state, or local

income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Applicant’s pleading admissions with respect to his accumulation of delinquent 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 his 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 persons cleared to access classified information. 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.

Historically, the timing of paying or otherwise resolving owed federal taxes to the federal government in DOHA proceedings is critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015)

Whether Applicant has reduced the amount owing the federal government on the delinquent taxes he accrued for tax year 2011 (\$21,110) remains unclear. For he provided no documentary evidence of his paying or otherwise resolving the reported tax delinquencies for tax year 2011. Without substantiating evidence of his paying or otherwise resolving his owed federal tax and consumer debts covered in the SOR, drawn conclusions are warranted that he has not completed his payment obligations pertaining to the listed debts in the SOR.

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, reasonable basis to dispute a past-due debt, or payment arrangements made with the cognizable tax authority to file or pay the amount owed 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, his lack of demonstrated responsible efforts in addressing his SOR-listed tax and consumer obligations preclude favorable findings and conclusions with respect to his 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. He has shown insufficient progress to date in addressing his delinquent federal tax and consumer debts covered in the SOR. His actions to date reflect a lack of financial responsibility and judgment and raise unresolved questions about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. More documented information about his inability to pay or otherwise resolve his delinquent federal taxes and consumer debts and demonstrate financial progress is necessary to mitigate financial concerns under the financial guideline and consideration of the whole-person to mitigate security concerns.

Taking into account all of the documented facts and circumstances surrounding Applicant's federal tax and consumer debt accruals that he has failed to pay or resolve to date, Applicant has failed to demonstrate enough probative efforts to mitigate financial concerns. Conclusions are warranted that his 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.c 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.c:

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

