



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03003

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel

For Applicant: *Pro se*

10/31/2017

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 considerations. Eligibility for access to classified information is denied.

Statement of Case

On November 23, 2015, 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Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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. Application of the AGs that were in effect as of the issuance of the SOR would not change the decision in this case.

Applicant responded to the SOR on December 9, 2015, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on July 6, 2015. Within the time permitted, he supplemented the record with written explanations of his claimed status of the SOR debts in issue. He claimed SOR debts ¶¶ 1.a and 1.c were settled; SOR debt ¶ 1.d was paid; and SOR debt ¶ 1.b remains unsatisfied. Applicant's submission was not objected to by Department Counsel and is accepted as Item 10. The case was assigned to me on April 11, 2017.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four delinquent consumer debts exceeding \$32,000. Allegedly, these debts remain outstanding.

In his response to the SOR, Applicant denied most of the allegations. He claimed he settled SOR debts ¶¶ 1.a and 1.d through a debt consolidation firm and paid off SOR debt ¶ 1.c with a check, leaving only SOR debt ¶ 1.b admitted and outstanding.

Findings of Fact

Applicant is a 65-year-old 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 August 1987 and has two adult children from this marriage. (Item 4) Applicant earned his GED in 1973 while enlisted in the Marine Corp. He reported no post-high school education credits.

Applicant enlisted in the Marine Corps in 1972 and served four years in the Inactive Reserve. He received an honorable discharge in August 1976. (Item 4) Between 1977 and 1978, Applicant served in the Army National Guard and received an honorable discharge in August 1978. (Item 4) Since August 1991, Applicant has been employed by his current employer.

Finances

Between December 2010 and September 2012, Applicant accumulated four delinquent consumer debts exceeding \$32,000. (Items 5-8) He provided no explanations of how these accounts became delinquent. (Items 2 and 9-10)

In 2012, Applicant and his wife entered into a debt consolidation program to address his delinquent accounts. (Items 2 and 9-10) Asked for information about his debt consolidation program by an interviewing agent from the Office of Personnel Management (OPM) in interviews conducted in December 2012 and March 2013, Applicant could provide no detailed information and referred the agent to his wife who manages the debt consolidation account. (Item 9)

In his post-FORM response, Applicant provided a July 2012 debt repayment summary covering payments made to his debt consolidation firm. The summary included SOR accounts in his payment plan but no updated payment information about specifically-listed SOR debts ¶¶ 1.a-1.b and 1.d. Credit reports included in the FORM and Applicant's response confirm that SOR debts 1.a-1.b were charged off in 2013 and are not listed as accounts covered by his debt consolidation plan. (Items 6-8 and 10)

Addressing SOR debt ¶ 1.d, the debt is listed in Applicant's credit reports as the same debt identified in the SOR. This debt is reported as closed as a delinquent account by the creditor in September 2011. (Item 5) Applicant's credit reports contain no references to the account reported in Applicant's debt consolidation summary as the same creditor as the one covered by SOR ¶ 1.d.

Without more information from Applicant equating or connecting the creditor covered in SOR ¶ 1.d with the one he claims to constitute the same account covered in his debt consolidation plan, the two accounts cannot be treated as one and the same or connected in any way for payment purposes. Only Applicant's claimed payoff of SOR debt ¶ 1.c is sufficiently documented as a paid debt to be accepted as resolved. Absent more corroborating evidence that SOR debts ¶¶ 1.a-1.b and 1.d have been fully addressed and satisfied as claimed, Applicant cannot be credited with paying or resolving any of these debts. Based on the information provided by Applicant in his OPM interview and the data supplied in the credit reports and Applicant's post-FORM materials, adverse inferences are warranted that SOR debts ¶¶ 1.a-1.b and 1.d have not been paid or resolved favorably to Applicant.

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, Appendix (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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse of dependence. 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 four delinquent consumer debts covered by SOR ¶¶ 1.a-1.d. Security concerns are raised, accordingly, over Applicant's finances.

Applicant's accumulation of four delinquent consumer debts warrant the application of three of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability to satisfy debts," DC ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," 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.

In Applicant's case, he accumulated four delinquent debts between December 2010 and September 2012 exceeding \$32,000. He has since paid or resolved SOR debt ¶ 1.c, but to date has not documented or provided adequate explanations of what corrective steps he has taken to pay or resolve SOR debts ¶¶ 1.a-1.b and 1.d. Based on the information provided by Applicant in his OPM interview and the data supplied in the credit reports included in the administrative record, Applicant's remaining debts remain outstanding.

Applicant's delinquent debts lack evidence of extenuating circumstances. MC ¶ 20(b), which extenuates financial concerns where "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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances," has no applicability to Applicant's situation. And based on Applicant's limited efforts devoted to addressing his remaining debts, he cannot take advantage of any of the other mitigating conditions covered by Guideline F.

Applicant's unresolved debt delinquencies relative to SOR debts ¶ 1.a-1.b and 1.d prevent him from meeting the Appeal Board's requirements for demonstrating financial stability. See ISCR Case No. 07-06482 (App. Bd. May 21 2008); see also 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). While all of Applicant's SOR debts may be barred by his state's statute of limitations, taking advantage of an enforcement bar due to the passage of time cannot be equated with the establishment of a strong track record of payments. See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010).

From a whole-person standpoint, Applicant's contributions to the defense industry with his current employer are worthy of considerable respect. They are not enough, though, to overcome security concerns associated with his history of accumulating significant consumer debts between December 2010 and September 2012. To date, he has not addressed his delinquent SOR debts covered by ¶¶ 1.a-1.b and 1.d, and they remain a source of trust concern.

Considering all of the circumstances surrounding Applicant's debt accruals and failure to address three of them with the resources available to him, his actions to date in dealing with his SOR 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 SOR debts ¶¶ 1.a-1.b and 1.d under Guideline F. Favorable conclusions are warranted with respect to the allegations covered by SOR debt ¶ 1.c.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparas. 1.a-1.b and 1.d:	Against Applicant
Subpara. 1.c:	For 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

