



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



In the matter of:

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2018

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 December 9, 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.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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. 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 for the issuance of the SOR would not affect my decision in this case.

Applicant responded to the SOR on February 10, 2017, and he requested a hearing. The case was assigned to me on June 21, 2017, and scheduled for hearing on August 2, 2017. The Government's case consisted of four exhibits (GEs 1-4). Applicant relied on one witness (himself) and one exhibit. (AE A) The transcript was received on August 14, 2017.

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 a child support order, an earnings statement, documented consumer debts and explanations. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded seven days to respond.

Within the time permitted, applicant supplemented the record with a copy of a child support order of November 2016 from another state and two character references. Applicant's submissions were admitted without objection as AEs B-D.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred a federal tax lien in May 2014 in the amount of \$528; (b) incurred a child support arrearage of \$7,820; and (c) accumulated four delinquent consumer debts exceeding \$2,000. Allegedly, these debts remain outstanding.

In his response to the SOR, Applicant admitted some of the debts and denied two others. Specifically, he denied having an outstanding federal tax lien, and he denied having a charged-off auto loan. He admitted having child support arrearage and three delinquent consumer debts. He provided no explanations or affirmative claims.

Findings of Fact

Applicant is a 33-year-old structural mechanic 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 November 2006 and divorced in February 2009. He has one child (age nine) from this marriage. (GE 1-2; Tr. 30-31, 41, and 47) He remarried in June 2014 and has one child from this marriage. (GEs 1-2; Tr. 41-42) He attended post-high school education classes between December 2006 and April 2007 but received no degree or diploma. Between August 2011 and November 2013 he attended classes at a local community college, but earned no degree or diploma. (GEs 1-2) Applicant enlisted in the Marine Corps in January 2006 and served five years of active duty. (GE 1) He received an honorable discharge in January 2011. (GE 1) Applicant has resided in his current state of residence since December 2010. (GE 1; Tr. 43)

Applicant has worked for his current contractor since June 2015. (GEs 1-2; Tr. 53-54) Between March 2015 and June 2015, he worked for a regional medical center as an EKG technician. He reported periods of unemployment between December 2014 and March 2015 and between January 2011 and March 2013. (GEs 1-2)

Applicant's finances

Between 2009 and 2016, Applicant accumulated a number of delinquent debts. He attributed his delinquencies to extended unemployment in the aftermath of his military discharge in 2011. (Tr. 25, 48) His delinquent debts included owed federal taxes for tax year 2014 in the amount of \$528. (GEs 1-2) Applicant documented paying this tax debt in March 2016. (AE A; Tr. 44-45)

Additionally, Applicant accumulated a child support arrearage following his divorce from his first wife in 2009 and ensuing military discharge in 2011. (GEs 1-2; Tr. 50) Between 2009 and his discharge in 2011, he made regular \$225 monthly child support payments through automatic pay withdrawals. (Tr. 50-51) His child support withholding payments ceased, however, after his military discharge. For his ensuing two plus years of unemployment, he was unable to make any child support payments. Beginning in March 2013, his new employer resumed Applicant's automatic pay withdrawals of \$225 a month to satisfy Applicant's child support obligations. (Tr. 53-54)

Between March 2015 and November 2016, he made no voluntary or involuntary child support payments. (Tr. 54-55), and his arrearage increased considerably. He reported child support arrearage of \$7,820 in his electronic questionnaires for investigations processing (e-QIP) of September 2015. (GE 1) By November 2016, his child support arrearage had increased to more than \$35,000. Judgment was entered against him in November 2016 by a court in his ex-wife's home state in the amount of \$35,175. (AE B) This net judgment amount was arrived at after crediting Applicant with arrearage applied by other states withholding orders. (Tr. 61-66) Under the terms of the state court's final order, Applicant was directed to pay his ex-wife the sum of \$3,000 within 90 days and remit any tax refund he might receive in the future to his ex-wife until the arrearage is paid in full. (AE B) And, he was obligated to make monthly payments of

\$590 in child support to his ex-wife in accordance with the terms of an income withholding order to be issued. (AE B)

Applicant assured he paid the \$3,000 directed by the state court in his case and committed to implementing \$590 pay withdrawals from his employer in compliance with the state court's directions and has reduced the balance owing to around \$32,000. (Tr. 27, 61) Afforded an opportunity to supplement the record with a payment history of his state court ordered monthly arrearage payments since the issuance of the court's November 2016 final order, Applicant did not provide any historical accounting of post-November 2016 arrearage payments. Whether and to what extent Applicant has complied with the terms of the state court's November 2016 final order is unclear at this point.

Besides incurring delinquent taxes and the child support arrearage, Applicant accumulated four delinquent debts. These debts are covered by SOR ¶¶ 1.c (a charged off auto loan for \$2,296); 1.d (a consumer debt placed in collection for \$688); 1.e (a medical account placed in collection for \$156); and 1.f (a consumer account placed in collection for \$134).

While Applicant believes he has paid off all of the listed medical and consumer debts listed in the SOR, he has not to date provided any documentation of his addressing any of these SOR-listed debts. Without documentation to corroborate his beliefs, they cannot be treated as resolved debts. Based on his credit reports in evidence, these debts remain unresolved. (GEs 2-4; Tr. 32-36)

Applicant provided no evidence of budgeting or financial counseling. He did engage a credit repair firm in 2015 to help him "clean up his credit" and keep him up to date on what he needs to take care of. (GEs 1-2) He credited this firm with helping him to remove certain unidentified accounts from his credit reports. (GE 1)

Applicant grosses \$43,000 annually; while his wife grosses \$40,000 a year. (Tr. 76-77) He maintains approximately \$5,000 in a 401(k) retirement account but has no veterans disability benefits. (Tr. 79) He has no monthly discretionary funds to address other expenditures. (Tr. 81-85) In 2016, he financed a home with a VA mortgage of \$168,000 and no money down. Monthly payments on his mortgage are \$1,200. (Tr. 83) Currently, he is up to date with his mortgage and car payments and other debts. (Tr. 81-85)

Character references

Applicant is well regarded by his supervisors and coworkers. (AEs C-D) Both supervisors describe Applicant as an excellent aircraft mechanic. (AEs C-D) They consider him to be one of their best employees who does everything asked of him. They credited him with an excellent work ethic while under their respective supervision who does not hesitate to go above and beyond his duties. (AEs C-D)

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, ¶ 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, ¶ 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 accumulating delinquent federal taxes, child support arrearage, and several medical and consumer debts. All but his federal tax debt for tax year 2014 remain delinquent and outstanding. Recently, his child support arrearage was reduced to judgment for more than \$35,000 with payment terms set by the court. Applicant's continuing debt delinquencies warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts;” 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, local income tax as required.”

Applicant’s pleading admissions with respect to his listed delinquent child support arrearage, medical, consumer debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Applicant’s delinquent debts are fully documented in his credit reports and create some initial judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him 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.

Extenuating circumstances (i.e., extended unemployment and the lack of sufficient income to cover his arrearage on his child support obligations for his nine year-old child) have accounted for most of Applicant’s financial problems over the course of the past seven years since his military discharge in 2011. 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,” partially applies to Applicant’s situation.

Since accepting the state court’s child support arrearage payment terms in November 2016, Applicant claims to be making progress in fulfilling the court’s directions for paying the determined arrearage. Afforded an opportunity to provide corroborating evidence of his making the payments called for in the court’s final order, he has not done so. The arrearage is substantial and requires documented proof of his compliance efforts to satisfy his evidentiary burden in these proceedings.

Without documented proof of Applicant’s complying with the state court’s terms, mitigating benefits covered by the acting responsibly prong of MC ¶ 20(b) cannot be met. 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)). For the same reasons, the acting responsibly prong of MC ¶ 20(b) is not available to him with regard to his listed medical and consumer debts.

Absent documentation of Applicant’s compliance with the state court’s order covering his child support arrearage and making payments on the medical and consumer debts covered by SOR ¶ 1.c-1.f, or providing documentary evidence of reasonable disputes of any of these debts, he may not avail himself of the mitigation benefits of either MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” or MC ¶ 20(e), “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is

the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

While some financial counseling credit is warranted to cover Applicant's use of a credit repair firm in 2015, availability of MC ¶ 20(c), “the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control,” to Applicant is quite limited. Aside from his using a credit repair service to eliminate debts from his credit reports, he provided no probative evidence to show he received beneficial counseling advice on how to better manage his finances in the future. Payment follow-up on his child support arrearage and other listed delinquent debts in the SOR is missing and cannot be reconciled with principles of good financial counseling advice on how to improve account management.

Applicant provided documentary proof of his paying the federal taxes owed for tax year 2014 in March 2016, well before the issuance of the SOR. (AE A) This listed SOR debt covered by SOR ¶ 1.a is mitigated and resolved in Applicant's favor.

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) . In Applicant's case, he has a very limited track record in addressing his lengthy history of child support arrearage since he ceased making payments to his ex-wife in March 2015. Still uncertain is whether he has made his child support payment in compliance with the state court's November 2016 final order.

Whole-Person Assessment

Whole-person assessment is a mixed one for Applicant. While he is well-regarded for his trustworthiness, reliability, and work ethic by his supervisors, he has shown little documented progress to date in addressing his child support arrearage and medical and consumer debts.

Overall, Applicant's actions to date in addressing his finances reflect limited attention to his debts and insufficient financial responsibility and good judgment to credit him with restoring his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. These security concerns leave unresolved doubts about his ability to prudently manage his finances in the future.

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.b-1.f of the SOR. Favorable conclusions are warranted with respect to subparagraph 1.a of the SOR based on Applicant's documented satisfaction of the 2014 federal tax debt covered by SOR ¶ 1.a. Eligibility to hold a security clearance under the facts and circumstances of Applicant's case is inconsistent 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.b-1.f	Against Applicant
Subparagraph 1.a:	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 eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

