



**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. 16-03073

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

03/07/2018

**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 November 19, 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.

Effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position were established to supercede all previously issued national security adjudicative criteria or guidelines. 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 change the decision in this case.

Applicant responded to the SOR on January 12, 2017, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 27, 2017. He did not supplement the record. The case was assigned to me on October 1, 2017.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) incurred a state tax lien in 2015 in the amount of \$2,035 and (b) accumulated 21 delinquent consumer debts exceeding \$39,000. Allegedly, these listed debts remain outstanding.

In his response to the SOR, Applicant admitted each of the alleged debts. He provided no explanation or attachments.

### **Findings of Fact**

Applicant is a 39-year-old general foreman 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 October 2002 and has two children from this marriage. (Item 2) He reported no post-high school education credits and no military service. (Items 2-3) Since May 1997, Applicant has been employed by his current employer. (Items 2-3)

### **Applicant's finances**

Between 2013 and 2016, Applicant accumulated 21 delinquent consumer debts exceeding \$39,000. (Items 2-4) He provided no evidence of addressing any of these listed debts, and they remain outstanding. (Items 3-4) In 2015, a state tax lien was entered against him in the amount of \$2,035, covering back state taxes owed for tax years 2013-2014. While Applicant claimed to have satisfied the back taxes covered by the tax lien, he provided no documentation to corroborate his claims. (Items 3-4)

Applicant attributed his delinquent debts to a lack of income and excessive spending by his wife. (Item 3) He has made no attempts to pay these delinquent debts for

some time. He expressed intentions to pay them in the future “if he is able to get ahead of things.” (Item 3) He is unsure, however, as to when this will happen because of the limits of his finances. Applicant provided no evidence of budgeting or financial counseling.

### **Policies**

The SEAD 4, Appendix (App.) 4 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 delinquent debts. Applicant's accumulation of multiple debt delinquencies over a four-year period 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.

Applicant’s delinquent debts merit limited application of MC ¶ 20(b). MC ¶ 20(b) 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.”

Applicant attributed his debt delinquencies to insufficient income and excessive spending by his wife. Without more detail about his debts and the circumstances in which they arose, his explanations are insufficient to enable him to take full advantage MC ¶ 20(b).

Applicant’s unresolved debt delinquencies 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 some 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 can not 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 over the course of his lengthy employment with his current contractor are worthy of respect. They are not enough, though, to overcome security concerns associated with his history of accumulating delinquent debts with no evidence of his working with his creditors and making concerted efforts to address them after they became delinquent. His delinquent debts remain a source of trust concern; even though some may be currently barred by his state’s statute of limitations.

Considering all of the circumstances surrounding Applicant’s debt accruals and failure to address them when circumstances permitted, 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.v of Guideline F.

### **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.v:

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 security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

