



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03365

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

12/28/2017

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 December 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 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Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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 elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on April 7, 2017. 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 \$19,000 for tax years 2012 and 2013; (b) a state tax lien in March 2012 for \$7,138; and (c) over \$22,000 in delinquent consumer debts. Allegedly, these debts remain outstanding.

In his response to the SOR, Applicant admitted all of the alleged debts in the SOR with explanations. He claimed to be making monthly payments to the creditor covered by SOR ¶ 1.a and expects to reduce the taxes owed to the Federal Government to \$10,000 after filing his 2016 federal tax return. He claimed he paid the creditor covered by SOR ¶¶ 1.f and 1.b/1.g (duplicate accounts). He claimed he settled the debt owed to creditor 1.d and is making payments to creditor 1.e (reduced in the amount owed on the state tax lien to \$1,000). And he claimed he will contact the creditor covered by SOR ¶ 1.h and pay the amount due. Applicant attached no supporting documentation to his response.

Findings of Fact

Applicant is a 37-year-old senior consultant 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 May 2015. (Items 3-4) His wife is a citizen of South Korea and a homemaker who currently lives apart from him. He has no children from this marriage. (Items 3-4) He attended college classes between August 2004 and July 2008, but earned no degree or diploma. (Item 3) He reported no military service.

Applicant has worked for his current employer since September 2008. (Items 3-4) Since November 2012, he has been living and working overseas. (Items 3-4) He reported unemployment between August 2004 and June 2008 while taking classes as a full-time

college student. (Items 3-4) Between August 2004 and June 2005, he worked for other employers in various job specialties. (Items 3-4)

Applicant's finances

Between October 2012 and August 2015, Applicant got behind with many of his debts and let them fall into delinquent status. (Items 3 and 6) His accumulated delinquencies included his federal and state tax obligations. Altogether, Applicant accrued delinquent tax debts for tax years 2012 and 2013 in the aggregate amount of \$19,000. (Items 3-4) During this period, he also became delinquent with his state tax obligations for 2012 in the amount of \$7,138 and incurred a state tax lien in March 2014 for this amount. (Items 3-4) Applicant attributed his federal and state tax delinquencies (SOR debts ¶¶ 1.a and 1.e) to his employer's inserting too many tax deductions in his W-2. (Items 3-4)

While Applicant assured he has paid down his federal and state tax debts, he provided no documentation to corroborate his claims. Garnishment proceedings initiated in 2014 are responsible for some reductions in Applicant's SOR ¶¶ 1a and 1.e tax debts. (Items 3-4)

Beginning in 2015, Applicant made voluntary payment arrangements with both the Internal Revenue Service (IRS) and his state taxing authority to pay down the taxes owed to both tax authorities. To what extent he followed through with voluntary payments to the IRS and state tax authority is unclear. (Items 4-6) Without more furnished information, no favorable inferences can be drawn of Applicant's personal progress in addressing his delinquent federal and state taxes for tax years 2012-2013 (federal taxes) and 2014 (state taxes).

Besides Applicant's delinquent tax debts, he accumulated a number of delinquent consumer debts exceeding \$22,000. (Items 1-6) He provided no evidence to document any initiated payment efforts.

Applicant provided no evidence of financial counseling, budgeting, or character references. Nor did he provide any evidence of performance evaluations and community contributions to back whole-person assessments.

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 (a) delinquent federal taxes for tax years 2012-2013 exceeding \$19,000, (b) a 2014 state tax lien for \$7,138 covering taxes owed for tax year 2012, and (c) delinquent consumer accounts exceeding \$22,000. Applicant's accumulation of delinquent federal and state taxes and 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 federal and state taxes and consumer debts negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's delinquent tax and 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)

To what extent Applicant has reduced the amount owing the Federal Government on the delinquent federal taxes he accrued for tax years 2012-2013 remains unclear. For he provided no documentary evidence of his voluntarily paying or otherwise resolving the reported tax delinquencies for tax years 2012-2013. The only identifiable reduction in his federal tax delinquencies are the monies recovered from Applicant through involuntary garnishment mounted by the IRS. Proof of voluntary repayment initiatives taken by Applicant to address his state tax and consumer debts are also lacking in the record. Without substantiating evidence of his paying or otherwise resolving his owed federal and state taxes and consumer debts covered in the SOR, no favorable conclusions are warranted that he has addressed his delinquent debts sufficiently to be credited with substantial payment efforts.

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 and state tax debts and consumer accounts 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 and state taxes and consumer debts and demonstrate financial progress is needed 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 and state 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.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

