



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01124

Appearances

For Government: Bryan Olmos, Esq., Department Counsel

For Applicant: *Pro se*

12/26/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On May 5, 2017, 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Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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 May 26, 2017, and requested a hearing. The case was assigned to me on June 20, 2017, and scheduled for hearing on August 4, 2017. The Government's case consisted of four exhibits (GEs 1-4) Applicant relied on one witness (herself) and four exhibits. (AEs A-D) The transcript was received on August 15, 2017.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts exceeding \$4,000 and student loans exceeding \$6,000. Allegedly, these debts remain delinquent.

In her response to the SOR, Applicant admitted all of the listed SOR financial allegations. In explanation, she claimed she paid the alleged debt covered by SOR ¶ 1.c, is making monthly payments to creditors covered in SOR ¶¶ 1.a and 1.e, and is scheduled to begin making monthly payments to creditors covered by SOR ¶¶ 1.b and 1.d. She claimed she cannot consolidate her two student loans covered by SOR ¶¶ 1.f and 1.g, and has not started paying on these student loan debts.

Findings of Fact

Applicant is a 30-year-old associate engineer technician 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 January 2012 and has three children (ages eight, four, and two) from this marriage. (GE 1; Tr. 38, 42) She earned a bachelor of science degree in industrial engineering May 2010 and financed her education with the aid of student loans. (GE 2; Tr. 41-42) Applicant reported no military service. (GE 1)

Applicant has worked for her current contractor since June 2016. (GE 1) She reported recurrent periods of unemployment between June 2015 and June 2016, between December 2010 and April 2011, and between August 2005 and January 2007. (GE 1) Between April 2011 and May 2015, she worked for a local school district as a computer lab technician. (GE 1) Previously, she worked for various non-DOD employers

in different kinds of jobs (to include tutoring, sales, and camp counseling). (GE 1; Tr. 43-44)

Applicant's finances

While in college, Applicant took out several Sallie-Mae-Stafford loans to finance her college education. Because her husband is attending college on a scholarship and has little income of his own, she has had difficulties in keeping up with her student loan debts and has been unable to consolidate her federal student loans. (Tr. 33-36) Applicant's listed SOR debts are comprised of the following: SOR debts ¶¶ 1. a (a judgment debt for \$2,295), 1.b (\$1,103), 1.c (\$182), 1.d (\$6,426), 1.e (\$504), 1.f (\$2,100), and 1.g (\$2,526).

Applicant's student loans became delinquent in June 2012. (GEs 2-4; Tr. 73-78) Her SOR debts ¶¶ 1.b, 1.d, and 1.e (all medical accounts for which her insurance carrier did not cover) became delinquent in 2016. (GEs 3-4) She and her husband determined to pay off his debts and her medical debts before addressing her student loans. (Tr. 50-51, 78-80) She tried consolidating her federal loans in 2016 without success. (Tr. 46-49)

Applicant is firmly committed to paying off her medical debts. (GE 2; Tr. 49-50) She has since paid off SOR debt ¶ 1.c in 2016. (AEs B and D; Tr. 59-60, 66-67) She has payment plans in place with her medical creditors covered by SOR ¶¶ 1.b and 1.d, and has paid \$7,530 to date to these creditors at the rate of \$500 a month. (AE B; Tr. 50-51) She pays \$50 a month to SOR creditor 1.e and currently owes about \$200 on this medical account. (AE C; Tr. 64-65, 84-85) And since September 2016, she has made \$100 monthly payments to her SOR ¶ 1.a judgment creditor. (GE 2 and AE A) When she completes her payments to SOR creditor 1.e, she will commence making payments to her student loan creditors covering SOR debts ¶¶ 1.f and 1.g. (Tr. 32, 39-40, 64-65, 69-70, and 81-82) Her plan is to become debt-free within the next two years.

Applicant received a refund of \$5,000 from the Internal Revenue Service (IRS) on her 2016 federal return and used \$2,000 to buy a used truck for her husband. (Tr. 64-65, 84-85) Currently, she earns \$42,000 a year and maintains a balance of \$3,000 in her checking account. (Tr. 54-56) Her husband earns approximately \$52,000 a year. Applicant's monthly expenses include a car payment (\$361), child care, and household expenses. (Tr. 57-58)

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. 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 delinquent student loan and medical accounts. Her debt delinquencies warrant the application of three 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"; and 19(c), "a history of not meeting financial obligations."

Applicant's pleading admissions with respect to her accumulation of delinquent student loan and medical debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's delinquent student loan and medical debts are fully documented in her 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 privacy 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., unemployment and personal medical issues) have accounted for a good deal of her financial problems with her student loans and medical debts. 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, a death, divorce or separation, clear victimization by predatory lending practices, or identify theft), and the individual acted responsibly under the circumstances,” are present and entitle Applicant to partial application of MC ¶ 20(b).

To date, Applicant continues to make progress in addressing her delinquent medical debts and is committed to working with her student-loan lender to pay off her student loans once she has paid off her medical debts. Her payment plans in place reflect good progress in addressing her medical debts and a long term commitment to pay off her student loans.

Applicant’s responsible efforts in addressing her debts with the limited resources available to her during recurrent periods of unemployment and thereafter, while coping with child care and her husband’s full-time schooling commitments enable her to be credited with meeting the acting responsibly under the circumstances prong of MC ¶ 20(b). 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).

Applicant’s corrective steps taken to resolve her accrued medical debts through a combination of payments and payment arrangements with medical creditors enable her to avail herself of the mitigation benefits of MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” She has shown consistent progress in addressing her medical creditors.

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, her demonstrated responsible efforts in addressing her SOR-listed medical obligations, coupled with her credible plan to address her student loans once she has paid off her medical debts, enable favorable findings and conclusions to be reached with respect to security concerns raised in connection with her security clearance application.

Whole-Person Assessment

Whole-person assessment is favorable to Applicant. She has shown sufficient progress to date in addressing her delinquent medical debts and promise to address her student loans covered in the SOR to merit positive overall credit. The contributions she is credited with making to her company and the defense industry generally are fully noted. Overall, Applicant’s actions to date in addressing her finances and demonstrating her trustworthiness reflect restored financial responsibility and judgment and resolve

questions about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

Based on all of the documented facts and circumstances surrounding Applicant's medical and student loan debt accruals that she has either paid off or is resolving through payment arrangements and credible commitments to address, she has presented enough probative evidence of financial progress to mitigate financial concerns. Conclusions are warranted that her finances are sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance.

Favorable conclusions are entered with respect to the allegations covered by subparagraphs 1.a through 1.g of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is 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): FOR APPLICANT

Subparagraphs 1.a-1.g:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

