



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01182

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

11/30/2017

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 and personal conduct. Eligibility for access to classified information is denied.

Statement of Case

On May 10, 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.

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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, 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 June 19, 2017, and requested a hearing. The case was assigned to me on August 8, 2017, and scheduled for hearing on September 26, 2017. The Government's case consisted of seven exhibits (GEs 1-7). Applicant relied on one witness (himself) and four unsigned non-binding documents (non-disclosure agreement, security briefing statements, and memorandum by his facility security officer (FSO)) that were identified, objected to on relevance grounds, and denied admission without prejudice to Applicant to produce signed versions with explanations of the meaning and relevance of the exhibits. (Tr. 27-39). The transcript (Tr.) was received on October 4, 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 signed versions of his offered exhibits A-D (non-disclosure agreement, security briefing statements, and briefing memorandum by his FSO) and explanations of his payment agreement with SOR creditor ¶ 1.a. and payment initiatives with his other listed creditors. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded three days to respond. Upon request, Applicant was granted additional time to supplement the record. Within the time permitted Applicant supplemented the record with documentation of a credit-fixing agreement. Applicant's submission was admitted without objection as AE E.

Department Counsel, in turn, provided an updated Joint Personnel Adjudicative System (JPAS) summary confirming that Applicant was previously denied his request for an interim clearance. This JPAS submission was admitted as GE 8.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred an adverse judgment against him in 2015 in the amount of \$2,697; (b) is delinquent in his child support payments in the amount of \$2,228; and (c) accumulated nine delinquent debts exceeding \$6,000. Allegedly, these SOR debts remain outstanding.

Under Guideline E, Applicant allegedly falsified his electronic questionnaire for investigations processing (e-QIP) of February 9, 2016, by omitting his 2015 judgment and

back child support, and by failing to disclose his listed delinquent debts (SOR debts ¶¶ 1.c-1.k). Allegedly, these omissions involved material non-disclosures.

In his response to the SOR, Applicant admitted most of the listed SOR financial allegations. He denied being behind with his child support payments in the amount of \$2,228, and denied being indebted to SOR creditor ¶ 1.j. Applicant also denied falsifying his February 2016 e-QIP. In explanation, he claimed he moved several times and did not receive creditors letters. He claimed that he has engaged a credit repair firm to help him fix his credit, and “get things disputed and paid.” (Applicant’s response) He further claimed he has paid off most of his back child support obligations and now owes only \$206. And he claimed that his SOR ¶ 1.j creditor has been paid and no longer appears on his credit report.

Addressing the falsification allegations, Applicant claimed he misunderstood the questions inquiring about the entered judgment and owed back child support. He further claimed he was not aware of any collections when he completed his e-QIP.

Findings of Fact

Applicant is a 25-year-old aerospace 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.

At hearing, Applicant produced documentation (unsigned) of a non-disclosure agreement, security briefing statements, and briefing memorandum from his facility FSO of his being granted a secret security clearance granting him access to classified information. (AEs A-D) None of these unsigned briefing statements bind the DOD to grant Applicant a security clearance and have no relevance to Applicant’s application for a security clearance from DOD. The only official verification of Applicant’s current clearance status is contained in the latest JPAS summary of Applicant’s status. (GE 8) This summary confirmed Applicant’s interim declination of a clearance. For jurisdictional purposes, Applicant has no pre-hearing clearance access to classified information. (GE 8)

Background

Applicant married in August 2015, separated in January 2016, and divorced in January 2017. (GEs 1-2; Tr. 43-44) He has one child from a prior relationship who lives with her mother in another state and receives child support payments from Applicant. (GE 2; Tr. 45-46) Applicant earned a high school diploma in June 2012. He reported no post-high school education credits or military service. (GEs 1-2)

Applicant has worked for his current contractor since December 2015. He reported unemployment between July 2015 and December 2015. Between July 2009 and March 2013, he worked in various jobs for non-defense contractors. (GEs 1-2)

Applicant's finances

Between 2013 and February 2016, Applicant accumulated a number of delinquent debts. One of the debts listed in the SOR (¶ 1.a) was taken to judgment by the creditor in 2015 in the amount of \$2,697. (GEs 2-5) Applicant opened this account (a furniture account) in November 2013 and stopped making payments after the retailer refused to fix the broken furniture. (GEs 1-2; Tr. 46-49) While this judgment has since been removed from Applicant's credit reports, the judgment remains unsatisfied. (AE E; Tr. 47-48)

Besides his judgment debt with creditor 1.a, Applicant fell behind with his child support obligations in another state in November 2013. With garnished payments from his salary he has reduced the amount of delinquent payments owing to around \$202. (GE 2; Tr. 50) Other delinquent debts accumulated by Applicant are comprised of the following creditors: creditors 1.c (\$2,328); 1.d (\$1,274); 1.e (\$1,247); 1.f (\$848); 1.g (\$559); 1.h (\$362); 1.i (\$390); 1.j (\$250), and 1.k (\$51). Applicant attributed these debts to financial irresponsibility (both himself and his ex-wife).

Applicant described his finances as not very good in his March 2016 interview with an agent of the Office of Personnel management (OPM) and promised to get in touch with his identified creditors to attempt to resolve his debts. (GE 2) To date, all of Applicant's listed debts remain outstanding except for his two small traffic debts (SOR debt ¶ 1.j) that have since been satisfied. (GEs 2-7 and AE E; Tr. 51-53, 65)

In an effort to clean up his credit, Applicant enrolled in a credit repair program in May 2017. (AE E; Tr. 66-67) The credit repair firm issued a program status summary in October 2017 that lists several of the listed SOR accounts deleted from his credit report for unexplained reasons. (AE E; Tr. 47-49) These deleted accounts include the creditor 1.a \$2,697 judgment, which remains unsettled and unsatisfied; the \$848 debt owed to creditor 1.f; the \$559 debt owed to creditor 1.g; and the \$51 debt owed to creditor 1.k. Altogether, Applicant was credited by his credit repair firm with relief from \$6,500 worth of debts (only some of which are included in the SOR). (AE E; Tr. 68)

Because Applicant did not supply any information documenting or accounting for the reasons for the credit report deletions of these five debts, no inferences can be drawn as to whether the accounts were deleted due to payment, disputes of the debts, age of the debts, or for some other reason. Without more information from Applicant about his listed SOR debts, the debts cannot reasonably or practically be treated as resolved, in payment plans, or in the process of being successfully resolved by Applicant through his credit repair firm. (AE E; Tr. 51-59)

e-QIP falsification issues

Asked to complete an e-QIP in February 2016, Applicant answered "no" to questions in Section 26 seeking information about any incurred judgments, garnishments, delinquent child support, and debts turned over for collection, charged off, or over 120 days delinquent. (GEs 1-2; Tr. 60-63) Applicant's omissions were material to information

needed to complete his background information and were clear and straightforward in their meaning and context. His claims of misunderstanding the questions posed in Section 26 of his e-QIP cannot be reconciled with his acknowledgments that he did not read the questions out of embarrassment for all of his financial problems. (Tr. 63-64) Without more clarifying information from Applicant, his omissions, in light of all the presented circumstances, reflect a lack of candor and integrity on Applicant's part.

In a follow-up interview in March 2016, Applicant was asked by the interviewing OPM agent whether he wished to confirm his negative e-QIP responses to questions presented in Section 26 of the e-QIP concerning his finances. (GE 2) After Applicant confirmed to the agent that he wanted to stick with his negative e-QIP responses, the agent confronted Applicant with the debts covered in the SOR. With added explanations about the individual accounts, he confirmed their existence and expressed his intention to obtain copies of his credit reports and either settle the accounts or dispute them. (GE 2) Applicant's acknowledgments and explanations of the debts covered in the SOR were provided only after confrontation by the interviewing OPM agent and cannot be considered voluntary corrections under all of the circumstances considered.

Applicant did not provide any evidence of budgeting or financial counseling. Nor did he furnish evidence of character references or community involvement.

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.

Personal Conduct

The Concern: Conduct involving questionable judgment, trustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. . . . AG, ¶ 15.

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 delinquent consumer accounts (inclusive of an outstanding judgment and still unsatisfied child support order) Additional security concerns are raised over Applicant’s omissions of his delinquent debts in the e-QIP he completed in February 2016.

Financial Concerns

Applicant’s accumulation of delinquent consumer debts 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 financial status with his listed delinquent debts is the result of a combination of all of these DC 19(a) factors.

Applicant’s pleading admissions with respect to his accumulation of delinquent consumer debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s delinquent consumer debts are fully documented in his credit reports and summary of OPM interview, 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 have some potential application to Applicant with his divorce and attribution of spousal irresponsibility contributing his poor financial profile but were never developed by Applicant. 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," have little application here absent more information about his wife's role in managing his finances. By admission, Applicant's accumulated delinquent debts are principally due to the collective irresponsibility of himself and his ex-wife in addressing their debts in a timely and accountable fashion.

To date, Applicant has made little manifest progress in addressing his delinquent consumer debts. While his credit-fixing firm has helped him to shed \$6,500 in reported debts, details of the accounts removed from his credit reports are not documented and cannot be determined whether they have been substantively addressed or not. Considered as a whole, Applicant's efforts to date to resolve his debts are not enough to enable him 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)).

While Applicant's engagement of a credit-fixing firm is encouraging, his efforts in eliminating accounts from credit reports without proof of addressing them substantively are not enough to enable him to take full advantage 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." More probative evidence is needed of his addressing his individual debts listed in the SOR on their merits than he has provided with his proofs to date.

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 consumer obligations preclude favorable findings and conclusions to be reached with respect to security concerns raised in connection with his finances.

Personal Conduct Concerns

Security concerns over Applicant's judgment, reliability and trustworthiness are raised under Guideline E as the result of his omissions of his delinquent debts in the e-QIP he completed in February 2016. By omitting his delinquent debts, Applicant failed to furnish materially important background information about his financial history that was

needed for the Government to properly process and evaluate his security clearance application. DC ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts to any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” fully applies to Applicant’s situation.

Applicant’s explanations of his omissions are not fully reconcilable with his claims of misunderstanding the questions covering his finances in Section 26 of his e-QIP. Both in his OPM interview and hearing testimony he attributed his omissions to embarrassment over his finances and not reading the questions. The questions themselves were clear and straightforward and could not reasonably have been misunderstood.

Further, Applicant may not be credited with any prompt, good-faith corrections of his financial omissions. Close examination of the March 2016 summary of interview reveals that the OPM agent contacted Applicant the same month (shortly after Applicant’s submission of his e-QIP) for the specific purpose of discussing his omitted debts. Applicant’s acknowledgments of his delinquent debts came only after his being confronted by the OPM investigator.

Summarized, Applicant’s answers to questions posed by the OPM agent who interviewed him in March 2016 were not sufficiently prompt, or voluntary, to enable him to invoke MC ¶ 17(a), “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.” Applicant’s corrections, made only after being confronted with the specific debts listed in the SOR, do not meet either the prompt or good-faith prongs of MC ¶ 17(a), as these terms are generally understood in the Appeal Board’s jurisprudence. See ISCR Case No. 02-30369 at 5 (App. Bd. Oct. 27, 2006) (sustaining denial of security clearance); ISCR Case No. 04-00789 at 7 (App. Bd. June 28, 2006) (reversing grant of security clearance); ISCR Case No. 99-0557 at 4 (App. Bd. July 10, 2000) (reversing grant of security clearance).

Whole Person Assessment

Whole-person assessment, considering all of the circumstances presented, is unfavorable to Applicant. Neither his historical progress in addressing his delinquent debts nor his cited recurrent failures to provide full and good-faith disclosures of his delinquent debts in his e-QIP answers and ensuing OPM responses reflect sufficient evidence of the trustworthiness, reliability, and good judgment required for eligibility to access classified information. Overall, Applicant’s actions to date in addressing his finances and Government inquiries about his finances reflect insufficient financial

responsibility, judgment, and candor to resolve questions about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

Taking into account all of the documented facts and circumstances surrounding Applicant's consumer debt accruals and omissions of material information about his finances in the e-QIP he completed and in his ensuing OPM interview, there is insufficient probative evidence of financial progress and candor on Applicant's part to mitigate financial and personal conduct concerns. Favorable conclusions are entered with respect to the allegations covered by subparagraphs 1.j and 1.k of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this 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.a-1.i	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.b:	Against Applicant
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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

