



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



In the matter of:

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ISCR Case No. 17-01343

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2018

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 16, 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Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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 May 31, 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 five exhibits (GEs 1-5) Applicant relied on one witness (himself) and four exhibits. (AEs A-D) The transcript 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 documentation of a zero balance reported with respect to the debt covered by SOR ¶¶ 1.e-1.f. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with documentation of settlement of each credit card account for less than the full balance for each account. Applicant's submissions were admitted without objection as AE E.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) is indebted to the Department of Education (DoE) for six delinquent student loans placed for collection of loan amounts exceeding \$28,000 and (b) is indebted for two delinquent credit card accounts exceeding \$4,500. Allegedly, these reported debts are unpaid and unresolved.

In his response to the SOR, Applicant admitted the alleged student loan debts covered by SOR ¶¶ 1.a-1.d and 1.g-1.h and the consumer debt covered by SOR ¶ 1.f with explanations. He admitted SOR ¶ 1.e in part, admitting his wife listed him as a user on the account she created. He disputed the student loan debts, claiming he believed they were all covered by his GI Bill education benefits, which today are characterized as education benefits authorized by the Department of Veteran Affairs (VA) for eligible military service members who have completed their required service. Elaborating, he claimed that after further clarifications from the DoE, he now believes that all of the listed SOR student loan debts represent valid obligations, which he will begin addressing.

Applicant further claimed that after his wife (a teacher) was forced to accept a 10% pay reduction, both he and his wife experienced financial strains to the point where they became unexpectedly overextended. He claimed that the SOR ¶ 1.f debt belongs to him

and was reported to him by the creditor as a canceled debt. Applicant disputed this SOR ¶ 1.f debt for the reason he believes he no longer owes the debt in light of the creditor's charge-off.

Findings of Fact

Applicant is a 49-year-old security guard 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 March 2009 and has one child from this marriage. (GE 1) He earned a high school diploma in June 1987. (GE 2) He attended on-line courses conducted by a for-profit university between April 2009 and May 2013, but did not obtain a degree or diploma. (GE 2; Tr. 34-35) He financed his education with six student loans exceeding \$28,000. (GEs 2-5; Tr. 36-37)

Applicant enlisted in the Marine Corps Reserve in September 1989 and served 15 months of active duty and received an honorable discharge. (GE 10) He enlisted in the Army National Guard in his state in April 2006 and continues to serve as an active reservist with his state's Army National Guard with an E-6 pay grade. (GEs 1-2; Tr. 32) Since January 2010, he has maintained a specialty in motor transportation. (GEs 1-2) His Army National Guard service does not require a security clearance. (GE 1)

Applicant has worked for his current security agency since April 2016. (GE 1; Tr. 33) Between January 2011 and April 2016, he worked for a security protection firm as a security officer. Previously, he has worked for non-DoD employers in various types of work assignments for very low wages. (GE 1; Tr. 33, 39-40)

Applicant's finances

Between 2010 and 2013, Applicant accumulated six delinquent student loans exceeding \$28,000. (GEs 3-5) These loans were taken out in Applicant's name by his wife holding his power of attorney for herself and Applicant to supplement the funds he received from the Federal Government under his VA benefits program. (GEs 3-4; Tr. 35-36, 38-41) At the time he committed to these student loans, he believed that these loans (save for \$300 a month for living expenses) were covered by his VA program. (Tr. 41-42) Because he did not think that the loans were valid, he let them go into default. (Tr. 41)

Once Applicant became aware that the student loans in his name were valid and had nothing to do with his VA benefits program, which covered his class tuition, he resolved to pay them. (Tr. 41) Not until he talked with an official from DoE in 2017 did he come to realize that these loans taken out by his wife in his name were not covered by the VA benefits program and were his responsibility. (GE 2; Tr. 43-44)

Applicant still suffers from a memory and cognitive disability attributable to a diagnosed traumatic brain injury (TBI) he incurred in the Gulf War in 1991 while exposed to ordnance and explosives. Applicant continues to receive treatment from the VA. (Tr. 38)

Addressing his disability, he gave his wife a power of attorney to act on his behalf in legal matters. (Tr. 38-39) She used his power of attorney to take out standard DoE student loans in 2009 and 2012 that were not covered by Applicant's VA benefits program. (GEs 2-5; Tr. 41-43) While Applicant's VA benefits program covered his tuition payments, it did not cover either of their personal expenses. (Tr. 42-43) Applicant's wife still holds his power of attorney and continued to receive collection notices from his student loan lender. (Tr. 38-39)

Applicant's wife is a school teacher who took a 10% pay reduction several years ago. Her pay decrease has continued to impact their ability to keep up with their family bills. (Tr. 46-47) Since becoming aware of his student loan obligations, Applicant applied for, and was accepted in DoE's loan rehabilitation program in May 2017. (AE C; Tr. 43-45) Monthly payments of \$108 were set up for Applicant in May 2017. To date, he has documented \$550 in monthly payments in June 2017, and is in good standing with his DoE student loan lender. (AEs C-D; Tr. 43-44)

Besides his student loans, Applicant accumulated over \$4,500 in joint delinquent credit card debt that he and his wife used to cover their living expenses. (Tr. 47) These debts consist of two credit card accounts: one in his wife's name (SOR ¶ 1.e for \$2,455) and one in Applicant's name (SOR ¶ 1.f for \$2,047). (AEs A-B; Tr. 19-22) Initially, creditor ¶ 1.f charged off its loan and issued Applicant a cancellation of debt (Form 1099-C) in December 2016. (AE A) When Applicant pressed the creditor to settle the debt after receiving the SOR in May 2017, the creditor offered Applicant terms in June 2017 as follows: a single payment of \$716 by June 2018 in full settlement of the listed debt. (AE A) By ensuing telephone discussions, Applicant agreed to make a scheduled payment of \$716 by August 16, 2017 to settle SOR debt ¶ 1.f. (AE A) Applicant made this scheduled payment and satisfied the debt in full for less than the full balance due. (AE E)

By similar telephonic agreement, Applicant settled his joint debt reported in his wife's name that is covered by SOR ¶ 1.e (\$2,455). This debt had also been charged off by the creditor, who likewise issued a cancellation of debt in December 2016. (AE B) Payment terms for satisfying this debt called for Applicant's making a \$982 payment by June 2018. (AE B) Applicant made this scheduled payment and satisfied the debt in full for less than the full amount. (AE E)

Applicant and his wife have developed a budget for managing their monthly expenses and have begun to put aside between \$400 and \$800 a month in savings accounts for a rainy day. (Tr. 49-50) Applicant expressed gratitude for his job and has been active in cleaning up his debts. (Tr. 48-50)

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 accrual of delinquent student loan debts and two delinquent consumer accounts. Applicant's accumulating of delinquent student loan consumer debts warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; and 19(c), "a history of not meeting financial obligations."

Applicant's pleading admissions with respect to his accumulation of delinquent student loan and 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 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 Applicant's financial problems with his student loan and consumer 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances," fully applies to Applicant's situation.

Since learning from the DoE that his student loan debts are rightfully his and are not covered by his VA benefits, Applicant has made considerable progress in addressing his delinquent student loans and is now in good standing in the lender's rehabilitation. He has also documented his resolution of his two delinquent credit card accounts.

Applicant's responsible efforts in addressing his debts with the limited resources available to him while working low-income jobs with a treatable memory disability and reduced income from his wife enable him to take advantage of 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 his student loan and consumer debts through a combination of payments and settlement agreements enable him to avail himself 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." Applicant is credited with making concerted effort to resolve his debts once he was informed of his valid student loan obligations the status and achieved good-paying employment with his current employer.

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 demonstrated responsible efforts in addressing his SOR-listed tax and consumer obligations enable favorable findings and conclusions to be reached with respect to security concerns raised in connection with his security clearance application.

Whole-person Assessment

Whole-person assessment is favorable to Applicant. He has shown sufficient progress to date in addressing his delinquent student loans and two delinquent credit cards covered in the SOR to merit positive overall credit. The contributions he is credited with making to his security agency and to the defense industry generally, and the meritorious military service he continues to provide as a member of his state's Army National Guard fully noted. Overall, Applicant's actions to date in addressing his finances and demonstrating his trustworthiness reflect restored financial responsibility and judgment and 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 student loan and consumer debt accumulations that he is either addressing with payment agreements or has settled with payment agreements, enough probative evidence of financial progress has been presented to mitigate financial concerns. Conclusions are warranted that his 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.h 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.h

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

