



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01927

Appearances

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

03/16/2018

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding his financial considerations, but mitigated personal conduct concerns. Eligibility for access to classified information is denied.

Statement of Case

On June 15, 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) effective June 8, 2017 by Directive 4 of the Security Agent directive (SEAD 4), dated December 10, 2016, entitled *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.

Applicant responded to the SOR on June 26, 2017, and requested a hearing. The case was assigned to me on August 29, 2017, and scheduled for hearing on September 28, 2017. The Government's case consisted of seven exhibits (GEs 1-7) Applicant relied on one witness (himself) and two exhibits. (AEs A-B) The transcript was received on October 5, 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 documented payment or resolution of his creditor SOR debts ¶¶ 1.d and 1.e. For good cause shown, Applicant was granted 11 days to supplement the record. Department Counsel was afforded two days to respond.

In a post-hearing email submission, Applicant confirmed that he was unable to obtain the documentation from the business that was requested of him. He offered no excuses and requested discontinuance of any further actions on his security clearance application. He stated that he would reapply at a later date if it is needed. (HE 1)

Because the hearing was convened and completed prior to Applicant's request for discontinuance of the hearing proceeding, the process cannot be terminated without a decision on the merits. See Section 4.4.1 of the Directive.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) filed for Chapter 7 bankruptcy relief in October 2005 (discharge in February 2006) and accumulated four delinquent accounts exceeding \$34,000. Allegedly, the four accounts remain unresolved.

Under Guideline E, Applicant allegedly falsified material facts when he omitted past federal tax debts for tax years 2002-2003, state tax debts for tax year 2004; and delinquent child support of \$5,496, as of October 2005, from the electronic questionnaires for investigations processing (e-QIP) he completed in July 2010 with these identified omissions.

In his response to the SOR, Applicant admitted his bankruptcy petition of October 2005 and 2006 discharge, but denied the remaining allegations. Addressing the falsification allegations covered in the SOR, Applicant admitted the omissions he made in his e-QIP with respect to past federal and state taxes owed and child support arrearage, but claimed the alleged debts and child support arrearage covered years beyond the seven years asked for in his e-QIP questionnaire and did not require his addressing.

Findings of Fact

Applicant is a 51-year-old manufacturing 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 October 1986 and divorced in September 1993. He has two adult children from this marriage. (GEs 1-3 and AE A; Tr. 37, 42) Applicant remarried in April 1991 and has two children from this marriage (ages 21 and 14). (GEs 1-3; Tr. 43) Applicant earned a high school diploma in May 1984 and attended vocational classes between September 2015 and an unidentified date. (GE 1)

Applicant enlisted in the Army in October 1986 and served five years of active duty before transferring to the Army Reserve, where he served for several years and completed a deployment in Afghanistan. He received an honorable discharge in April 1991 due to weight control issues that prevented him from meeting the Army's weight control standards. (GEs 1-3; Tr. 48-49)

Since March 2016, Applicant has been employed by his current employer. (GEs 1-3) Previously, he worked as a service technician (January 2015-February 2016). He reported unemployment between February 2014 and January 2015.

Applicant's finances

Following years of struggles with his finances, Applicant petitioned for Chapter 7 bankruptcy relief in October 2005 and received his discharge in February 2006. (GEs 3-4; Tr. 45-46) In his bankruptcy petition, he scheduled 26 creditors with aggregate claims exceeding \$50,000. (GEs 4 and 6) Among the listed unsecured creditors, 16 held credit card accounts with Applicant and his wife. (GE 4) Applicant included priority federal and state tax claims in his bankruptcy petition that covered tax years 2002-2003. (GEs 4 and 7) His 2006 discharge was finalized without any assets available for distribution to his creditors. (GEs 4 and 6)

Since his bankruptcy discharge in February 2006, Applicant accumulated several other delinquent debts. Two of the delinquent accounts (SOR debts ¶¶ 1.b-1.c) involved the same creditor. Applicant's credit reports reveal that the larger debt (SOR debt ¶ 1.b) was initially placed in collection before being paid and closed in June 2015. (GEs 5-6; Tr. 23) Applicant's other account with this creditor (SOR debt ¶ 1.c) was opened in May 2007 and charged off in May 2010 (GE 5) It has since been reopened and is in current status with a \$132 balance. (GE 6 and AE B; Tr. 24-25)

Disputed by Applicant are listed SOR debts ¶¶ 1.d and 1.e. Credit reports confirm that SOR debt ¶ 1.d (a reported deficiency balance on a repossessed vehicle originally

purchased in August 2013) was charged off in April 2016 with a reported balance due of \$23,503. (GE 5) Applicant claims that he has since resolved this debt and has documentation to substantiate his settlement of the debt. Afforded an opportunity to supplement the record with documentation of his resolution of the debt, he was unable to do so.

Like SOR debt ¶ 1.d, SOR ¶ 1.e also remains in delinquent status. Credit reports confirm that Applicant opened this account in May 2007 to finance a vehicle purchase. (GEs 4-5; Tr. 28-29) When Applicant's finances tightened after he changed jobs in 2009 and was burdened with added expenses associated with caring for his mother, he determined he could no longer afford the car payment and voluntarily returned the vehicle to the lender in February 2009. (GEs 3-4 and 6) Applicant has been unsuccessful in obtaining documentation of a payment agreement he has with the creditor. Afforded an opportunity to supplement the record with documented resolution of the debt, Applicant advised that he could not do it. (HE 1 and GEs 5-6)

Applicant currently earns approximately \$3,100 a month in disability benefits dispensed by the Department of Veterans Affairs (VA). (Tr. 52) He nets about \$1,900 a month from his work; while his wife earns roughly \$3,000 a month. (Tr. 52-53)

E-QIP omissions

Asked to complete an e-QIP in July 2010, Applicant did not list (a) past federal tax debts for tax years 2002-2004; (b) past state tax debts for tax year 2004; and (c) child support arrearage of \$5,496. (GEs 1-2) Each of the delinquent debt omissions involve tax debts incurred more than seven years prior to his completing his two e-QIPs in 2016 and fall beyond the seven-year period covered in the e-QIPs. Applicant completed verbal payment agreements with both tax jurisdictions, and has since paid off the debts owed. (Tr. 34-36, 55-57) Falsification allegations are unsubstantiated.

Addressing the allegations of his omission of his owed back child support, Applicant denied ever owing \$5,496 for child support. (Tr. 37-38) He relied on a child support order of October 2000 that modified a previous divorce decree with his first spouse and granted (a) sole custody of his daughter to his first spouse with reasonable visitation rights to him and (b) sole custody of his son to him with reasonable visitation rights to his first spouse. The order makes no mention of any owed child support. (AE A)

Allegations of falsification pertaining to alleged child support arrearage owed to his first spouse are unsubstantiated for two reasons: (a) lack of persuasive evidence that Applicant ever owed \$5,496 in child support to his first spouse and (b) whatever child support Applicant may have owed his first spouse fell outside of the seven year scope of inquiry specified in Applicant's July 2010 e-QIP. Favorable inferences of candor are warranted in connection with the SOR allegations of falsification of Applicant's July 2010 e-QIP.

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, 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 cooperate or provide truthful and candid answers during national security investigative or adjudicating processes” AG E.

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 history of financial problems marked by his petitioning for Chapter 7 bankruptcy in 2005 (discharged in 2006) and post-bankruptcy accumulation of delinquent accounts. Additional security concerns are initially raised over his omission of federal and state tax debts and child support arrearage in the e-QIP he completed in July 2010.

Financial concerns

Applicant's Chapter 7 bankruptcy filing and discharge and accumulation of delinquent 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 admitted delinquent debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant's admitted delinquent debts are fully documented and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified 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.

Applicant's cited extenuating circumstances (i.e., unemployment and excessive expenses associated with caring for his mother) provide some mitigation credit for his failure to address his listed SOR debts. Based on his cited circumstances, 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," has some application to Applicant's situation

To his credit, Applicant has addressed some of his delinquent accounts (notably SOR debts ¶¶ 1.b-1.c). However, he has not been able to resolve his two largest accounts: SOR ¶¶ 1.d-1.e. Based on Applicant's cited circumstances, the "acting responsibly" prong of MC ¶ 20(b) has only limited application and cannot excuse his past inability to address his two largest creditors holding deficiency balances on repossessed vehicles.

In these circumstances, Applicant's failure or inability to address these two remaining debts preclude him from fully availing himself of the benefits of MC ¶ 20(b). See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 26, 2017); 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). For similar reasons, MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” is not fully available to mitigate his still unresolved SOR ¶¶ 1.d-1.e debts.

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, and implicitly where applicable the resolution of delinquent debts. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant’s case, his inability to address his remaining debt delinquencies with creditors ¶¶ 1.d and 1.e. warrant unfavorable findings and conclusions with respect to raised security concerns covered by the financial considerations guideline.

E-QIP concerns

In his responses, he denied owing any past child support to his first wife and claimed that in any case the years alleged in the SOR fell beyond the scope of the seven years covered in Section 26 of Applicant’s e-QIP. Applicant’s presented evidence in his behalf is both credible and corroborated. Personal conduct concerns are unsubstantiated.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. He has shown insufficient progress to date in addressing his remaining delinquent debts merit positive overall credit. His military service and contributions he has made to his current employer and defense industry generally are not enough to overcome historical trust and judgment issues associated with his failure to resolve his unresolved delinquent debts.

Overall, Applicant’s actions to date in addressing his finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. 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 SOR ¶ 1.d-1.e. Favorable conclusions are entered for SOR ¶¶ 1.a-1.c. Personal conduct concerns are unsubstantiated. 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

Subparas 1.a-1.c:

For Applicant

| | |
|---------------------------------|-------------------|
| Subparas 1.d-1.e: | Against Applicant |
| GUIDELINE E (PERSONAL CONDUCT): | FOR APPLICANT |
| Subpara 2.a: | For 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

