



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02056

Appearances

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

01/16/2018

Decision

WESLEY, Roger C., Administrative Judge:

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

Statement of Case

On June 30, 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Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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 July 27, 2017, and requested a hearing. The case was assigned to me on August 22, 2017, and scheduled for hearing on September 28, 2017. The Government's case consisted of five exhibits (GEs 1-5). Applicant relied on one witness (herself) and two exhibits. (AEs A-B) The transcript was received on October 5, 2017.

Procedural Issues

Before the close of the hearing, Applicant asked to keep the record open to permit her the opportunity to supplement the record with her response to the default judgment entered against her by SOR creditor ¶ 1.b. 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 furnished a cover letter explaining the origins of the default judgment entered in 2008 against her by SOR creditor ¶ 1.b, along with an explanatory letter from her attorney confirming the absence of any documented renewal of the judgment. Applicant's submissions were admitted without objection as AEs C-D.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated one delinquent debt in the amount of \$1,454 and incurred an adverse judgment against her in 2008 in the amount of \$22,263. Allegedly, these debts remain outstanding.

In her response to the SOR, Applicant admitted the allegations covered by SOR ¶ 1.a, with explanations. She claimed she was in contact with SOR creditor ¶ 1.a to determine how to settle the account in full. Addressing the allegations covered by SOR ¶ 1.b, Applicant denied the allegations, with explanations. She claimed she overpaid the SOR ¶ 1.b creditor for plumbing costs by the amount of \$9,183.75. She further claimed that any amount due on the judgment that does not relate to plumbing is fraudulent. And she claimed she is working with an attorney to further rectify the situation.

Findings of Fact

Applicant is a 67-year-old quality assurance engineer 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 1969 and divorced in January 1970. (GEs 1-2) She remarried in May 1978 and divorced in May 1989. She has no children from either marriage. (GEs 1-2) She earned an associate's degree in quality assurance in May 2003 and a bachelor's degree in organizational behavior in December 2004. (GEs 1-2) Also, she earned an esthetician's license in 2003. (GEs 1-2) Applicant reported no military service.

Applicant has worked for her current employer since February 2016. Between August 2008 and February 2016, she was employed by the same defense contractor in neighboring states. Applicant worked for another defense contractor between October 2006 and August 2008, and for non-defense contractors in various jobs between December 2005 and October 2006. (GEs 1-2)

Applicant's finances

In 2003, Applicant (aided by the sale of a home in another state) opened a personal business devoted to skin care. (GE 2; Tr. 32-33, 42) Having previously been laid off by her previous employer, the income she earned from her personal business was her only source of revenue. (GEs 1-2) She leased office space from creditor ¶ 1.b. As part of her leasing contract, she agreed to have the owner install sinks and minor build-outs to her space at a cost of \$8,475. (GE 2; Tr. 29, 34-40) Because this initial lease agreement with accompanying addendums is not in evidence, verification of the terms of the lease cannot be made. (Tr. 39)

In July 2004, Applicant signed a promissory note for \$22,203, to be repaid by July 2014. (GE 2; Tr. 40) Applicant initially disputed the amount called for in the note as excessive for the work she orally agreed to be performed by the owner. When the owner afforded her the option of either signing the note for \$22,203 or vacating the space (GEs 2 and 5), she signed the note proffered to her for \$22,203. (GEs 2 and 5) While she characterized the note as adhesive and claimed the promissory note afforded her little choice, she committed herself to honor the terms of the note she signed. (GEs 2-5; Tr. 39-42) The note summarized Applicant's agreed monthly lease payment terms as follows: \$185 covering rent, taxes, and utilities, and an additional \$22,062 for agreed extras for a total of \$23,913 (less the credited rental payment of \$1,650 for the month of July 2004). (GE 5)

Applicant continued to make the agreed monthly payments for several years. After unsuccessful efforts to sell her business, she closed the business in 2005 without any residual market value or remaining lease obligations from the successor landlord. (GE 2; Tr. 31, 49) Still, after closing her business, she continued to make her lease payments to her original landlord. All told, between July 2004 and June 2007, she made aggregate lease payments of \$9,183 to her old landlord under the terms of her promissory note, leaving around \$14,000 owing on the note. (GEs 2 and 5 and AE A; Tr. 44-47)

On the advice of her lawyer, Applicant ceased making payments on the lessor's promissory note in June 2007. (GE 2; Tr. 41) Her attorney, in turn, wrote to the landlord (a lawyer) in an effort to try to settle Applicant's dispute over the terms of the promissory note. (Tr. 43) When her attorney encountered resistance from the landlord's own attorney, she hired another attorney to try and resolve the dispute, but he, too, was unsuccessful in resolving Applicant's dispute with the creditor's judgment claim. (GE 2; Tr. 43)

In late 2008, creditor 1.b filed a civil suit seeking recovery of the full \$22,203 covered in the 2004 promissory note. (GEs 2 and 5) Without any verifiable service on Applicant, the landlord obtained a default judgment against Applicant in June 2009 for the full \$22,203 demanded in the complaint, plus interest and costs. (GE 5 and AE A) Applicant never learned of the default judgment until 2012, when she noted its entry in her obtained credit report. (GE 2; Tr. 30, 44-45) After learning of the judgment's existence, she never took any action to set aside the judgment, and the judgment continued to be fully enforceable for the ensuing seven years. (GEs 2 and 5; Tr. 45-46)

Between 2010 and 2014, SOR creditor ¶ 1.b recovered \$3,836 from Applicant through court-approved garnishment levies on her wages, leaving over \$9,000 on the judgment unsatisfied. (GEs 2 and 5) When creditor ¶ 1.b did not renew its default judgment in accordance with the legal requirements of the state where the judgment was entered, the state's statute of limitations on judgment registration and enforcement expired, and the judgment is no longer an enforceable instrument. (AEs B and C) Based on the legal findings of Applicant's retained attorney, Applicant is no longer obligated to satisfy the remaining payment terms (approximating \$9,000) of creditor ¶1.b's June 2009 default judgment. (AE C)

Besides the SOR creditor ¶ 1.b judgment debt, Applicant accumulated a \$1,454 delinquent debt owed to SOR creditor ¶1.a. This debt is reported in Applicant's credit reports as a consumer account she opened in November 2002 and defaulted in May 2007. (GEs 2-4) Applicant characterized this debt as business-related, and she attributed its origins to her closing of her business in 2006 and the lack of financial resources to cover the debt after she shuttered her business.(GE 2) Applicant has since settled the SOR ¶ 1.a debt with a payment in full of \$1,454. Creditor ¶ 1.a credited Applicant with making a last payment of \$375 in September 2017 in accordance with the payment agreement she had with the creditor. (AE A; Tr. 48)

Other debts that became past due after Applicant closed her business in 2006 (albeit not covered in the SOR) have since been paid in full by Applicant. (GEs 3-4; Tr. 51-53) After resolving her old delinquent debts, she was able to buy another house in 2016 for around \$90,000 (Tr. 53-54) Her current debts include a mortgage on the house she recently purchased, a car payment, and six credit cards payments, all of which she assures are in current status. (GEs 3-4; Tr. 56-58) Applicant's assurances are credible and accepted.

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 incurring a default judgment in 2009 in the amount of \$22,203 and his incurring a delinquent \$1,475 consumer debt. Applicant's incurring of a business-related default judgment and delinquent consumer debt 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 listed consumer debt (SOR debt ¶ 1.a) negates the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Applicant's delinquent consumer debt is fully documented in her credit reports and create some initial judgment issues. See ISCR Case No. 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 the holder of a security clearance that entitles her 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 business-related issues involving a disputed judgment) have accounted for a good deal of Applicant's financial problems over the course of the past 13 years. 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," partially applies to Applicant's situation.

Since 2016, Applicant has made considerable progress in addressing her still outstanding judgment and consumer debts. Both her judgment debt and single consumer debt listed in the SOR have either been eliminated or paid in full.

Applicant's responsible efforts in addressing her debts with the limited resources available to her while struggling to keep her business afloat amidst an ongoing rental dispute with her landlord 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)). Both debts are linked to her closed business. After paying over \$9,000 towards satisfaction of the disputed landlord's invoice for unit upgrades associated with her business and being subjected to garnishment by the judgment creditor for an additional \$3,836, the judgment creditor let his judgment expire without renewing it. Additional monies owed under the expired judgment are no longer enforceable.

Applicant's corrective steps taken to resolve her disputed judgment debt and consumer debt through a combination of payments and garnishment 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." And by consistently disputing the bona fides of the promissory note she signed with SOR ¶ 1.b, Applicant may avail herself of the benefits of MC ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

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 business-related judgment debt and lone consumer debt 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 business-related judgment debt and consumer debt to merit positive overall credit. The contributions she is credited with making to her are fully noted. Overall, Applicant’s actions to date in addressing her finances reflect restored financial responsibility and good judgment and resolve questions about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

Conclusions are warranted that Applicant’s 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 and 1.b 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.b

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

