



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-02102

Appearances

For Government: Brian Olmos, Esq., Department Counsel
For Applicant: *Pro se.*

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated drug involvement. Financial consideration concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On December 21, 2017, the Department of defense (DoD) Consolidated Adjudications facility (CAF) issued a Statement of Reasons (SOR) detailing reasons under the drug involvement and financial consideration guidelines 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 DoD 5200.02, *Procedures for the Personnel Security Program* (PSP)

Applicant responded to the SOR on February 5, 2018, and requested a hearing. The case was assigned to another judge on March 23, 2018, reassigned to me on April 9, 2018, and scheduled for hearing on May 9, 2018. A hearing was held on the scheduled date for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At the hearing, the Government's case consisted of five exhibits (GEs 1-7). Applicant relied on one witness (himself) and four exhibits (AEs 14). The Government's exhibits were admitted without objection. The transcript was received on May 17, 2018.

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 satisfaction of the two respond. Within the time permitted, Applicant furnished documentation from a predecessor of creditor 1.a that Applicant does not owe them any money and from creditor 1.b that they no longer maintain records of the listed judgment debt. Applicant's submissions were admitted without objection as AEs E-F.

Summary of Pleadings

Under Guideline H, Applicant allegedly used marijuana with varying frequency between December 2015 and November 2016. Allegedly, he used marijuana after being granted a security clearance in June 2011.

Under Guideline F, Applicant allegedly accumulated two delinquent debt exceeding \$15,000. Allegedly, these listed debts remain outstanding and unresolved.

In his response to the SOR, Applicant admitted all of the allegations covering his drug activities and finances with explanations. He claimed his use of drugs was a short lived hobby that we will not repeat. He further claimed he will be relocating to another state, and he hopes the new environment will help him promote his continuing abstinence from drug use (now one and one-half years)

Addressing his finances, Applicant admitted each of the allegations covering the listed delinquent debts in SOR ¶¶ 2.a and 2.b with explanations. He claimed that he and his sister co-signed for the purchase of a vehicle in 2009 for his mother who needed a car for transportation. (Applicant's response) This vehicle (covered in SOR 2.a) was later repossessed by the lender in 2010. He further claimed that the lender was acquired by another entity that continued to report delinquent payments for the next few years without acknowledging the repossession.

Applicant further claimed in his response that the reported loan balance has since been removed from his credit report, as of January 2018 (for reasons not recited by Applicant. With respect to SOR ¶ 1.b, Applicant claimed that the leasing office misplaced the final payment of his apartment lease while Applicant was overseas, and the entered Judgment no longer appears on his credit report.

Findings of Fact

Applicant is a 35-year-old communications engineer for a defense contractor. He seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

Background

Applicant has never married, lives alone, and has no children. (GEs 1-3; Tr. 77) He attended a vocational school between September 2008 and July 2010 and earned a certificate of completion. (GE 3; Tr. 50, 72) He reported no military service.

Since February 2017, Applicant has worked for his current employer. (GEs 1-3) Between March 2013 and November 2016, he worked for non-defense employers in various jobs (interrupted by brief periods of unemployment in 2012 and 2013 and self employment in 2014) that did not require a security clearance.

Applicant's drug history

Applicant completed an e-QIP in April 2011 and was granted a security clearance the same month and year. (GEs 2-3) He was asked to complete a second e-QIP in November 2015. (GE 2) Beginning in December 2015 (one month after completing his second e-QIP), he initiated his marijuana usage. (GEs 1-3; Tr. 67-68) Between December 2015 and November 2016, he used marijuana with varying frequency, but typically two to three times a month on weekends. (GE 3; Tr. 65-68, 70-75) He did not consider himself a frequent user before experimenting with the drug in 2015-2016 with friends, and never employed his security clearance while at home using marijuana and in deployed status. (Tr. 48, 72-73). To quell any lingering security concerns about his using marijuana, he submitted to a voluntary drug test in 2018. (AE B) Test results proved to be negative. (AE B)

Applicant assured he will remain committed to abstain from drug involvement and substance misuse. (AE C) To substantiate his commitment to steer clear of illegal drugs in the future, he confirmed his understanding "that any future involvement of misuse will be grounds for revocation of my national security eligibility." (AE C) Applicant accepted his responsibility to remain abstinent from all use of illegal drugs in the future. (AE C)

Finances

Over the past seven years, Applicant accumulated two delinquent debts he attributed, in small part, to overseas assignments. Credit reports document that in August 2009, he co-signed with his sister for the purchase of a vehicle (for a purchase price of \$8,605) for his mother who needed a car to get to work and back. (GEs 3-5; Tr. 94-95) Credit reports document that by October 2010, he had gotten behind in his car payments (\$297 a month) and was over 120 days delinquent in his car payments. (GEs 3-4) Once his delinquency reached this level of past due status, the lender repossessed the vehicle (believed to be in 2010) and failed to notify Applicant or

his mother of the repossession and amount of the proceeds produced at the public auction of the vehicle (if the car was auctioned). (GE 3; Tr. 5354) Credit reports do not indicate what was owing in October 2010 before the repossession of the vehicle was completed. (GEs 3-4) They report only a balance due owed to creditor 2.a of \$14,758 as of May 2017. (GE 5; Tr. 91-92)

Whether the 2009-financed vehicle was ever auctioned and, if so, what sale proceeds were credited to Applicant is unclear. Correspondence posted to Applicant in May 2018 from the assignee of the original lender who financed Applicant's purchase of the vehicle could confirm only Applicant's purchase of the vehicle from its predecessor, its repossession of the vehicle in May 2010, and its submission of inaccurate credit reporting. (AE F) This assignee could neither confirm any post-repossession sale of the vehicle or any deficiency resulting therefrom. Nor did this assignee offer any information about any later assignment of its interest in the loan to the creditor listed in SOR ¶ 2.a. Applicant never made any follow-up attempts to ascertain any deficiency balance from the sale. (GE 3; Tr. 53-60, 99) Credit reports reveal that the original lender assigned its reported deficiency balance of \$14,578 to listed creditor 2.a of the SOR in May 2017. (GEs 5-6; Tr. 100-108) The deficiency no longer appears on Applicant's most recent credit reports of 2018. (GE 6 and AE A)

Applicant, however, never made any documented payments on the deficiency balance covered by SOR ¶ 2.a, and simply opted to let the debt fall off his credit report. (GE 2; Tr. 56-60) With over seven years of elapsed time since the reported repossession of the vehicle, the most likely explanation for the debt's removal from his credit report is the elapse of more than seven years of reporting of the debt and resulting charge-off and time-bar of enforceable collection.

Without more information from Applicant about the details of the repossession, disposition of the vehicle, and what monies he is still responsible for to creditor 2.a, his liability exposure cannot be determined. Most likely, he still owes something on the original purchase loan, even if it is not the entire reported amount of the loan. How much is unclear, and it is Applicant's evidentiary burden to provide enough probative evidence of the status of the loan to facilitate findings of what he currently owes the lender. His produced documentation to date is not enough to discredit or discount the reported data in his credit reports confirming the still outstanding balance owed to creditor 2.a of \$14,578. (GE 5 and AE F)

Besides his vehicle repossession and uncollected deficiency balance, Applicant incurred a default judgment stemming from the vacating of his apartment in July 2010 in anticipation of relocating without covering the last month's rent, reported to be \$1,045. (GEs 3:5; Tr. 51-53) After failed attempts to collect the rent from Applicant, creditor 2.b filed suit for monetary relief and later obtained a default judgment against Applicant in November 2010 for \$1,045. (GEs 3-5 and 7; Tr. 51-52)

Applicant's claims that his check for the last month's rent to the apartment lessee "just got lost" and was ultimately paid are not supported by any corroborating and substantiating evidence. (GE 3; Tr. 52) He committed to providing post-hearing proof of

his payment, but the evidence he provides insufficient to meet his evidentiary burden. (AE E)

To date, the SOR ¶ 2.b judgment has not been satisfied or otherwise resolved and has fallen off of Applicant's credit report. (AEs A-C and E) Applicant has made no documented attempts to resolve his rental dispute with the judgment holder's management, or provide any evidence of payment of the debt. (GEs A-C and E) Based on earlier credit reports, the judgment covered by SOR ,r 2.b remains outstanding and unresolved. (GEs 4-7)

Endorsements

Applicant is well-regarded by his supervisors and co-workers. His supervisor credited him with strong professional commitments in all areas he is responsible for as a member of his intelligence team. (AE D) His lead software engineer described him as reliable and responsible who he always trusted with completing important tasks. (AE D)

Applicant's director of business development extolled his work ethic, character, drive, morals, and values that he came to recognize and appreciate over the previous six years. Although, none of Applicant's references expressed any knowledge of his marijuana use or the state of his finances. (AE D)

Policies

The AGs list guidelines to be used by administrative judges in the decision making process covering DOHA 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 as 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 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 AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial into account the pertinent considerations for assessing extenuation 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. When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶

2(a) factors: (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.

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). And because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Viewing the issues raised and evidence as a whole, the following adjudication policy concerns are pertinent herein:

Drug Involvement

The Concern: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 24.

Finances

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 risk6of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶

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.

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). And, because all security clearances must be clearly consistent with the national interest, the burden of persuasion must remain with the Applicant.

Analysis

Applicant is a well-regarded communications engineer who presents with a considerable history of drug involvement and financial delinquencies. Principal security issues in this case center on Applicant's drug involvement and his accumulation of delinquent debts.

Drug concerns

Over a four-year period (between December 2015 and November 2016, Applicant used marijuana while holding a security clearance. Applicant's admissions to using illegal drugs while holding a security clearance risks of recurrence as well as judgment issues. On the strength of the evidence presented, two disqualifying conditions of the AGs for drug abuse are applicable: DC ¶¶ 25(a), "any substance misuse," DC 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and 25(f), "any

illegal drug use while granted access to classified information or holding a sensitive position.”

In Applicant's case, his significant use of marijuana over an 11-month period spanning December 2015 through November 2016 while holding a security clearance raises questions over the strength of his abstinence commitments. While Applicant's material use of illegal drugs between 2015 and 2016 has never been repeated since his acknowledged last use in November 2016 in any proven way, his drug use is still too recent to enable safe predictions of continued abstinence. It is too soon to apply any potential mitigating conditions to Applicant's situation. While Applicant's assurances that his drug involvement is a thing of the past are encouraging, more time is needed to draw safe inferences that he is not a recurrence risk.

Considering the record as a whole, there is insufficient probative evidence of sustainable mitigation to make predictable judgments about his ability to avoid drugs and drug purchases in the foreseeable future. Taking into account all of the facts and circumstances surrounding Applicant's past marijuana use over an 11-month period while holding a security clearance, he does not mitigate security concerns with respect to the allegations covered by subparagraph ¶ 1.a of the SOR.

Financial concerns

Additional security concerns are raised over Applicant's accumulation of delinquent debts that have not been addressed or resolved to date. Applicable disqualifying conditions are comprised of the following: DC ¶¶ 19(b), unwillingness to satisfy debts regardless of the ability to do so,” and 19©, “a history of not meeting financial obligations.”

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 entitled him or 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.

Historically, evaluation of an applicant's delinquent debts are critical to an assessment of the applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited disputes with his ex-wife over payment responsibilities for the listed student loan and consumer debts afford some grounds for crediting him with extenuating circumstances. 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,” partially applies to Applicant's situation.

Since his two delinquent debts became delinquent in 2010, Applicant has made no cognizable attempts to address the debts. His claims that the debts no longer appear on his most recent credit reports and have been charged off do not provide any mitigation relief. Because the debts may no longer be enforceable, Applicant is not relieved of his responsibility to address his creditors with good-faith payment initiatives. Charged-off debts reflect accounting entries in credit reports. Typically, when a creditor considers a debt to be uncollectible, it changes the debt's status from an asset to a charged-off account for credit reporting purposes. And, the Appeal Board has held that the fact that some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016)(citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting agency's request for information, or when the debt has been charged off. "Mere evidence that debts no longer appear on credit reports is not reasons to believe that they are not legitimate or that they have been satisfactorily resolved." ISCR Case No. 16-02941 at 2(App. Bd. Dec. 29, 2017)(citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015))

Based on Applicant's absence of any payment initiatives with his two listed creditors, he may not claim any of the mitigation benefits of the "acting responsibly" prong of MC ¶ 20(b), or claim benefits of other potentially applicable mitigating conditions, including overdue creditors or otherwise resolve debts." See ISCR Case No. 15-06440 at 3-5 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005))

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) In Applicant's case, he has not addressed any potential deficiency owed from his vehicle repossession or the entered judgment against him in 2010 (SOR debts his listed student loan and consumer debts and resolved them with payoffs (SOR debts ¶¶ 2.a-b), or provided any documented payment plans for resolving these debts.

Whole-person assessment

In making a whole-person assessment of Applicant's trustworthiness, reliability, and good judgment, consideration is given to not only the drug and financial issues raised in the SOR, but the contributions he has made to his employer and the defense industry in general. Overall, though, Applicant's has established insufficient probative evidence of his overall trustworthiness and understanding of DoD policy constraints on the use of illegal substances to facilitate safe predictions that his is at no risk of recurrence of illegal drug usage or that he can maintain his finances in a stable manner.

Unfavorable conclusions are warranted with respect to SOR ¶¶ 1.a and 2.a-2b. Criteria for meeting security clearance requirements have not been met by Applicant.

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 H (DRUG INVOLVEMENT): AGAINST APPLICANT

Subpara. 1.a: Against Applicant

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 2a-1b: Against 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