



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 17-02791

Appearances

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

09/19/2018

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 August 31, 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 Security Executive Agent, by Directive 4, *National security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016,

Applicant responded to the SOR on October 12, 2017, and requested a hearing. The case was assigned to another judge on March 23, 2018, and reassigned to me on April 9, 2018. The case was scheduled for hearing on May 8, 2018. The Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on one witness (himself) and 12 exhibits. (AEs A-K) The transcript was received on May 16, 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 his payment agreements with creditors 1.a-1.i and 1.l. (Tr. 95, 120-121) For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded three days to respond.

With the benefit of extensions, Applicant provided documentation of a loan modification (SOR ¶ 1.a) and payment agreements with creditors 1.b-1.i and Applicant's submissions were admitted without objection as AEs N-T.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 14 delinquent debts exceeding \$40,000. Allegedly, these listed debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted each of the listed SOR debts with explanations. He claimed he is a medically retired veteran who accumulated many of the listed debts while overseas working on a DoD contract. Applicant also claimed that SOR debts ¶¶ 1.j and 1.n cover debts incurred to buy furniture and complete remodeling of his home. And he further claimed that he has completed a loan application with creditor 1.a.

Findings of Fact

Applicant is a 38-year-old field engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted are incorporated by reference. Additional findings will follow.

Background

Applicant married in April 2005 and has one child (age 10) from this marriage. (GEs 1-2) Applicant earned a high school diploma in June 1998 and a bachelor's degree from a musical academy in June 2000. (GEs 1-2) He enlisted in the Navy in September 2004 and served five years of service (including multiple deployments to Iraq) before he was medically retired from service as a petty officer second class and placed on a permanently disabled retired list with a honorable discharge in September 2009. (GEs 1-2 and A and C; Tr. 47, 55-58, and 69)

Since April 2016, Applicant has been employed by his current defense contractor as a field engineer. (GEs 1-2)) Between September 2008 and April 2016, he worked for

various DoD contractors as a field technician. (GEs 1-2) His employment assignments were interrupted some by layoffs and paycheck delays between August 2011 and February 2012. (Tr. 46)

Applicant's finances

Between 2015 and 2016, Applicant accumulated a number of delinquent debts. (GEs 2-4) He attributed many of his debt delinquencies to layoffs, paycheck delays, and his wife's struggles with breast cancer and ultimately surgery in November 2016 for breast reconstruction. (Tr. 49, 68) Altogether, Applicant's wife encountered eight surgeries to address her initial removal and subsequent reconstruction surgeries. She expects to complete her last reconstruction surgery this year. (Tr. 53-54) These last two years (2015-2016), Applicant and his wife spent many of their own funds to address her reconstruction surgical procedures. With Appellant's reduced pay from what he saw used to receiving while working overseas, and limited health benefits from Applicant's TRICARE coverage, their finances were stretched beyond what was needed to keep up with their bills. (Tr. 59-69 and 123)

Since Applicant's debt delinquencies arose, Applicant has paid off a number of his listed delinquent debts and entered into payment agreements with others. Full payments are credited to repay SOR debts ¶¶ 1.k (\$963); 1.m (\$486), and 1.n (\$3,951). (AEs. I and K; Tr. 80-82) Payment agreements (both written and oral) are documented with SOR creditors: ¶¶ 1.a (\$1,274 on a past-due mortgage account); 1.b (\$9,057 on a charged-off furniture account); 1.c (\$8,286 on a charged-off student loan account); 1.d (\$6,374 on a charged-off consumer account); 1.e (\$4,893 on a charged-off consumer account); 1.f (\$2,776 on a charged-off consumer account); 1.g (\$1,123 on a charged-off consumer account); 1.h (\$1,000 on a charged-off consumer account); and 1.i (\$413 on a charged-off consumer account). (GEs 2-4 and AEs H-I, K-L, and N-T; Tr.80-99)

Altogether, Applicant has been able to pay off or otherwise resolve all but one of his listed SOR debts with payment plans. Only SOR debt ¶ 1.l (\$145) remains unresolved, and this is a listed debt that no longer appears on his credit reports and could not be located. (AE L)

Applicant is the sole financial provider for his family and currently earns \$60,750 a year from his current employer. (Tr. 51) He supplements his income with Veterans Affairs (VA) benefits (roughly \$2,000 a month) generated from his service disability and GI benefits associated with his prior Navy service. (Tr. 58-64, 99-101)

Besides the income he receives from his employment and supplemental benefits, Applicant has a 401(k) retirement plan with matching contributions from his employer and a few thousand dollars in the account. He receives VA benefits associated with his service disability and GI benefits. (AE F; Tr. 101-104) Typically, he has a \$700 remainder every month after paying household bills, and he continues to receive financial counseling from a counseling service he engaged in April 2018. (Tr. 77-78)

Applicant and his wife continue to work towards putting together a business that focuses on designs and builds reclaimed furniture. (Tr. 100-101) Pending her completion of reconstructive surgery, his wife has no plans to return to full-time employment. (Tr. 100-101)

Character references

Applicant is well regarded by his supervisors, colleagues, and friends. (AE B) All credit him with demonstrated devotion to his work and community activities. His supervisor and colleagues who have worked closely with him characterize him as hardworking, knowledgeable, and trustworthy in every way. (AE B)

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 or 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 accumulation of delinquent mortgage, student loan, and consumer debts during periods of layoffs and reduced income while his wife struggled with cancer and costly surgical procedures. Applicant’s accumulated debt delinquencies 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.”

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.

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 recurrent layoffs and income reductions between 2015 and 2016 while dealing with his wife’s major health issues contributed considerably to his increasing difficulties in managing his finances. Considered together, his identified financial problems afford solid grounds for crediting him with extenuating circumstances.

So, 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,” applies to Applicant’s situation.

With the aid of promotions and increased income, Applicant has been able to steadily address his debts and improve his finances. Addressing his listed SOR debts, he has either paid or is otherwise resolving them with repayment agreements (save for a single small debt that he has been unable to trace with his available credit reports). Based on his cumulative repayment efforts to date, Applicant fully satisfies the “acting responsibly” prong of MC ¶ 20(b).

Applicant’s repayment initiatives also enable him to take advantage of the mitigation benefits of another mitigating condition. MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” is fully applicable. 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)). Applicant's repayment efforts to date encompass most of his listed SOR debts and corroborate and substantiate his commitments to restore his finances to stable levels consistent with the requirements for holding a position of trust.

With the financial counseling he has received and continues to receive from the counselors he recently retained, Applicant may also claim the mitigating benefits of MC ¶ 20(c) "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control," applies to Applicant's situation. Applicant's mounted initiatives to regain control of his finances with the aid of financial counseling are encouraging and can be expected to continue with the resources currently available to him.

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 addressed his listed mortgage, student loan, and consumer debts and resolved them with payoffs (SOR debts ¶¶ 1.b and 1.d-1.h) and satisfactory payment arrangements with his remaining creditors (save for SOR debt ¶ 1.i which he could not locate).

Whole-Person Assessment

In making a whole-person assessment of Applicant's trustworthiness, reliability, and good judgment, consideration is given to not only the financial issues raised in the SOR, but the contributions he has made to his employer and the defense industry in general. Favorable credit is also warranted for the corrective steps Applicant has taken with his creditors.

Overall, Applicant's actions to date in addressing his finances are promising and enable him to overcome any reasonable doubts about his trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that his finances are sufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Financial concerns are mitigated.

Favorable conclusions are warranted with respect to SOR ¶¶ 1.a-1.h. Criteria for meeting the eligibility requirements for holding a security clearance are satisfied.

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.n:

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

