



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03097

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel

For Applicant: *Pro se*

06/28/2018

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 September 27, 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 DoD 5200.02, Procedures for the DoD Personnel Security Program (PSP).

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Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs).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, in accordance with the guiding principles governing fair process proceedings in Exec. Or. 10865, and subject to the updated substantive changes in the AGs, effective June 8, 2017.

Applicant responded to the SOR on November 13, 2017, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on January 11, 2018, interposed no objections to the materials in the FORM, and supplemented the FORM within the time permitted with additional information. The case was assigned to me on May 10, 2018.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) incurred a state tax lien in 2016 in the amount of \$14,674; (b) incurred an adverse judgment against her in 2011 in the amount of \$2,062; (c) accrued delinquent student loan debts in the aggregate amount of \$7,671; and (d) accumulated delinquent medical and consumer debts exceeding \$1,000. Allegedly, Applicant's listed tax lien, entered judgment, accrued delinquent student loans, and accumulated delinquent debts remain unresolved and outstanding.

Under Guideline E, Applicant allegedly deliberately omitted her accrued adverse judgment and delinquent student loans covered by SOR ¶¶ 1.d-1.f in the electronic questionnaires for investigations processing (e-QIP) she completed in July 2016.

In her November 13, 2017 response to the SOR, Applicant admitted some of the allegations with explanations. She claimed that most of the covered delinquent accounts have either been paid or committed to repayment plans. She claimed she only found out about the state tax lien in place in 2017 when she was filing her 2017 tax returns. Allegations she denied include her education loans covered by subparagraphs ¶ 1.a and 1.e-1.f. She claimed she contacted her education lender and was told her student loan accounts (both private and public) are in good standing. She claimed that the denied allegation covered by subparagraph ¶ 1.h has been reduced to \$40. And she claimed that the remaining delinquent accounts covered in the SOR have been paid and satisfied.

Applicant denied the personal conduct allegations covered in SOR ¶ 2.a. She claimed she misunderstood the question and was not aware of any outstanding judgment entered against her by SOR creditor 1.d, or of any delinquent student loan accounts at the time she completed her e-QIP. She denied any deliberate omissions of the debts covered by SOR ¶¶ 1.d-1.f. Applicant attached copies of her payment agreement with the state which entered a tax lien against her 2016, together with her December 2017 payment; and a satisfaction of judgment pertaining to SOR debt ¶ 1d.

In her November 13, 2017 response to the FORM, Applicant did not object to any items in the FORM and provided additional documents to be considered. Applicant supplemented her response with the same attachments she added to her FORM SOR response. Her supplemented documents were admitted as Item 6.

Findings of Fact

Applicant is a 42-year-old contract specialist 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 June 2005 and was widowed three weeks later in June 2005. (Items 2-3) She has one child (age 21) from a prior relationship. (Items 2-3). Applicant earned a high school diploma in June 1993. (Item 3) She attended college classes between January 2015 and March 2016 and earned a bachelors degree in March 2016. (Items 2-3). She reported no military service.

Since July 2016, Applicant has been employed by her current employer. (Items 2-3) Between February 2012 and July 2016, she was employed for a non-defense contractor as a procurement systems analyst. Contemporaneously with her work as a procurement systems analyst, she worked as a concierge. (Items 2-3) Between October 2005 and February 2012, she worked for assorted employers around recurrent periods of unemployment. She cited brief instances of unemployment in 2009 and 2010. (Item 2)

Applicant's finances

Credit reports confirm that Applicant incurred a state tax lien in 2011 in the amount of \$14,674. (Items 3 and 5) Credit reports also confirm the entry of a judgment against Applicant in August 2011 in the amount of \$2,062. (Items 3-6) Delinquent student loans covered by SOR ¶¶ 1.a (\$662), 1.e (\$6,523), and 1.f (\$1,148) exceed \$8,000 and remained outstanding based on Applicant's credit reports (Items 4-5) Delinquent medical debts account for the remaining three listed debts in the SOR and are comprised of the following: SOR debts ¶¶ 1.b (\$40), 1.g (\$233), and 1.h (\$205).

Applicant has since received some financial counseling and addressed all of her listed SOR debts. She entered into an installment agreement with the state holding a \$14,674 state tax lien and to date has reduced the balance owing to around \$12,413 through monthly payments of \$311.99 (Items 1 and 6). She documented satisfying the judgment debt covered by SOR ¶ 1.d in November 2017 for \$1,979. She provided probative evidence that her student loans covered by SOR ¶¶ 1.e-1.f are in good standing. And, she documented her paying off the following medical and consumer debts: SOR debts ¶¶ 1.a and 1.g-1.h. Her claim that SOR debt ¶ 1.b is a duplicate of the medical debt covered by SOR debt ¶ 1.h is corroborated and substantiated by her credit reports, is reasonable and credible under all of the circumstances considered, and is accepted.

(Items 1 and 6) Credit reports document her other listed accounts in current status. (Items 4-5)

E-QIP omissions

Asked to complete an e-QIP as a part of the investigation to determine Applicant's suitability to hold a security clearance, Applicant omitted the debts covered by SOR ¶¶ 1.c-1.f and alleged to be delinquent when responding to Section 26 of her e-QIP. (Items 2-5) She attributed her omissions to a misunderstanding of the question and her lack of knowledge of any unsatisfied judgment entered against her or delinquent student loans at the time she completed her e-QIP in July 2016. (Items 1-3) Applicant's claims of good-faith responses to the questions posed in her e-QIP about her finances are not challenged by the evidence in the exhibit file and are 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.

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 adjudicative processes. . . . AG ¶ 15.

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 an unresolved state tax lien in the reported amount of \$14,674, her accruing student loan debts exceeding \$8,600, and her accumulated medical and consumer debts exceeding \$400. Applicant’s incurring of a state tax lien, accruing of delinquent student loans, and accumulating other delinquent medical and consumer debts warrant the application of four 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”; 19(c), “a history of not meeting financial obligations”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Applicant’s admitted state tax lien and accumulation of certain delinquent student loan, medical, and consumer debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Each of Applicant’s admitted delinquencies 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 tax filing lapses and debt delinquencies.

Historically, the timing of resolving federal and state tax delinquencies are critical to an assessment of an 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 extenuating circumstances (several brief instances of unemployment in 2009 and 2010) are not enough to entitle her to more than partial application of extenuating benefits covered by from 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances."

To date, Applicant has made considerable financial progress in paying and resolving her debts. Aided by some financial counseling, she documented paying or resolving all but one of her listed SOR debts. And this debt (SOR debt ¶ 1.b) is a proven duplication of SOR debt ¶ 1.h. More specifically, she documented her 2017 payment agreement and payments made under the agreement, payment of her private student loan covered by SOR debt ¶ 1.a, returning her other student loans (SOR debts ¶¶ 1.e-1.f) to current status, and paying her remaining medical and consumer debts (SOR debts ¶¶ 1.g-1.h)

Applicant's payment initiatives entitle her to the mitigating benefits of MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," of the financial considerations guideline. Too little is known about her counseling efforts to afford her any more than partial application of MC ¶ 20 (c), "the individual has received 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."

Credit is warranted for Applicant's successful dispute of SOR debt ¶ 1.b. Applicant is entitled to the application 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," to the facts pertaining to SOR debt ¶ 1.b. See ISCR Case No. 05-11366 at 4 n.9 (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)).

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 timely filing of tax returns. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, her addressing of her listed delinquencies (i.e., her state tax lien, entered judgment, student loans, and other medical and consumer debts) are substantial and enough to warrant favorable findings and conclusions with respect to raised security concerns over the state of her finances.

Personal conduct concerns

Allegations of Applicant's falsifying her 2016 e-QIP by omitting the entered judgment entered against her and her reported student loans in default were never substantiated. Applicant's explanations for her omissions of her entered adverse

judgment and reported delinquent student loans were both corroborated and substantiated by the document submissions she provided.

Whole-Person Assessment

Whole-person assessment is favorable to Applicant. She has shown sufficient progress to date in addressing her state tax lien, student loans, and other delinquent debts to merit enough positive overall credit to mitigate financial concerns. When considered in conjunction with the general contributions she has made to her current employer and the defense industry in general, her overall efforts are enough to overcome historical trust and judgment issues associated with her incurrence of a state lien and her accumulation of delinquent student loan, medical, and consumer debts.

Overall, Applicant's actions to date in addressing her finances are sufficient to demonstrate solid probative evidence of restored financial responsibility and judgment to overcome reasonable doubts about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18. Conclusions are warranted that her 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 SOR ¶¶ 1.a-1.h. 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
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GUIDELINE E (PERSONAL CONDUCT); FOR APPLICANT

Subparagraph 2.a:	For Applicant
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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

