DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
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	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Bruno Katz, Esq.

11/07/2018

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 and personal conduct. Eligibility for access to classified information is granted.

Statement of Case

On March 24, 2018, 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).

Applicant responded to the SOR on March 26, 2018, and requested a hearing. The case was assigned to me on May 14, 2018. The case was scheduled for hearing on July 23, 2018. The Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on one witness (himself) and nine exhibits. (AEs A-I) The transcript was received on August 1, 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 a child support court order crediting Applicant with arrearage payments. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded three days to respond.

Within the time permitted, Applicant provided a cover email and documented copy of a State A court report and recommendation on motion to terminate income withholding order. Applicant's submissions were admitted without objection as AEs L-M.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated two delinquent child support arrearage accounts: one in State A (SOR ¶ 1.a) for $23,049 and one in State B (SOR ¶ 1.b) for $13,555. Allegedly, both of these listed debts remain outstanding. Under Guideline E, Applicant allegedly falsified material facts in the electronic questionnaires for electronic investigations processing (e-QIP) he completed in November 2015 by denying any delinquent child support payments within the past seven years.

In his response to the SOR, Applicant admitted to awareness of a past child support arrearage in State A, but claimed he was up to date with his payments at the time he completed his e-QIP in November 2015. He claimed that in contacts with State A officials in 2017, he was told he was in compliance with the state's withholding order by paying current child support payments ($1,041). He further claimed he has a payment plan to address his arrearage which will bring his total monthly payments to $1,241 under the state's withholding order that will remain in place until November 2019.

Addressing the allegations covering child support arrearage in State B, Applicant admitted awareness of this 2004 withholding order at the time he completed his November 2015 e-QIP, but denied being told of being behind with his withholding order payments. He claimed he was told by his military retirement payroll office that his withheld pay was being misdirected to State A to cover the child support arrearage in that state. He further claimed that he is working with State A to generate a double order of child support payments to State A redirected to State B to bring his withheld payments in that state into compliance.

Applicant denied falsifying his November 2015 e-QIP. He denied any prior knowledge that his withheld child support payments were being misapplied. He claimed

that he changed the coverage applications once he learned of the mistaken allocation of this payments from the OPM investigator who interviewed him in August 2017.

Findings of Fact

Applicant is a 54-year-old IT network operations team leader for a defense contractor who seeks a security clearance. The allegations covered in the SOR are denied and will be addressed with findings that follow.

Background

Applicant married in March 1986 and divorced in February 1995. (GEs 1 and 3 and A-B) He remarried in September 1997 and divorced in April 2010. (GEs 1 and 3 and AE B) Applicant married his current wife in August 2013 and has no children from this marriage.

Identification of Applicant's children and their respective ages is a bit confusing and complicated by inconsistencies, omissions, and revisions of the information he provided in his two e-QIPS and earlier February 1995 DD 398, his OPM interview summary, and his hearing testimony about his children and their ages. (GEs 1-3 and AE B; Tr. 151-152) In the first e-QIP he provided in June 2015, he omitted the names and ages of all of his children. (AE B) In a revised e-QIP he completed in November 2015, he listed four children from his first marriage (ages 30, 24, 21, and 18) and one stepdaughter (age 26). In an ensuing interview with an OPM investigator in August 2017 he identified the four children he named in his November 2015 e-QIP, as well as another adult stepchild (previously identified in his DD 398) from his first marriage, but no other children from either of his first two marriages. (GEs 2-3)

Asked to identify his children and their ages at hearing, Applicant identified the minor daughter he listed in his revised e-QIP from his first marriage as being then over the age of 18. (Tr. 151) And, he identified two other minor children (both under the age of 18) from his second marriage, who are covered by his still enforceable child support withholding orders in State A and State B, respectively. (Tr. 151-152) Applicant continues to provide child support for these two remaining minor children under the respective withholding orders of these two states. (GE 3 and AE's H-I; Tr. 151-152)

Applicant reported no educational credits within the past ten years or years prior. (GEs 1 and 3 and AE B) He enlisted in the Navy in September 1982 and served ten years of active duty. (GE 3) Between September 1992 and October 2002 he served in the Inactive Reserve before his retirement and honorable discharge in October 2002 with 20 years of combined service. (GEs 1 and 3; Tr. 88-89). (GE 3) He held a security clearance throughout his Navy career. (GE 1; Tr. 89-90)

Since November 2015, Applicant has been employed on a full-time basis by his current employer. (GEs 1 and 3; Tr. 26-34, 43-45) Prior to his full-time hire by his current employer, he worked part time for his current employer's parent company as a radio

frequency technician. Between March 2005 and September 2009, he worked for other employers as a shop supervisor. (GEs 1 and 3 and AE B; Tr. 43-45, 87-88)

Applicant's finances

Credit reports reveal that Applicant accumulated delinquent child support balances dating to April 2013 in State A totaling $23,049 (SOR ¶ 1.a) and delinquent child support balances totaling $13,555 in State B (SOR ¶ 1.b) (GE 5) Beginning in September 2012, Applicant agreed to a withholding order with State A's child support division. (AEs C, E-F and L-M) Terms of withholding were $1,041 a month for current support and $200 a month for the accrued arrearage (more than 12 weeks owed) for a total of $1,241 a month. (AEs C-E and I; Tr. 112-115) In State B, Applicant's monthly payroll deductions total $781. (AEs D-E; Tr. 142-144) Previously, both State A and State B garnished monthly his military retirement account. (AEs C, E, and I; Tr. 108-109)

Currently, both State A and State B child support orders are funded by voluntary payroll deductions. (GEs C-E and G-I; Tr. 114-117) While only one of Applicant's children was initially covered by State A's withholding order, his monthly payment terms of $1,241 have not changed and will not change until the entire arrearage is satisfied. (Tr. 142-144) In State B, only one child (still a minor) is currently covered by the state's child support withholding order and his monthly payments of $781 will not change either until the balance is sastisfied. (AEs D-E and H; Tr. 99-101, 142-144, 151-152)

Following his divorce of his first spouse in 2004, Applicant became delinquent with his court-approved child support payments for his oldest children residing in State B. (GEs 1 and 3-5 and AE D-E and H; Tr. 54-58) State B payment records document accrued arrearage between November 2004 and March 2018 of $13,555. (AEs D-E and H; Tr. 57-60, 99-100, 116-118)

Until he was interviewed by an investigator from the Office of Personnel Management (OPM) in August 2017, Applicant was working under the mistaken impression that the money withheld from his pay to cover child support arrearage in States A and B would be allocated on a pro-rata basis between State A and State B. (GE 3; Tr. 101-110) Once he was asked about child support delinquencies by the interviewing OPM agent, he checked with the child support divisions of States A and B, respectively, and learned that all of his withheld military retirement funds were being disbursed to State A only. (AEs C and H; Tr. 103-104, 110-113, 120-121, and 143-144) He was assured by both child support divisions that the mistaken allocations would be reversed to correct misapplied withheld funds to State A that rightfully should have been applied to State B's delinquent child support balance . (AEs G-H; Tr. 120-123)

Applicant's post-hearing submission documented the correct allocation of withheld child support arrearage for State A, and his State B arrearage has since been brought current to reflect the correct arrearage allocation. (AEs D, H, and L-M; Tr. 57-59, 105-106, and 116-117) Applicant hopes to complete his child support arrearage for State B by 2020. (Tr. 104, 147-148)

In May 2018, State A verified that Applicant had satisfied his child support arrearage to that state and no longer required withholding. (AEs J-K) Payment records of State A and State B confirm that Applicant is current with all of his child support and has a bi-weekly remainder of $250. (AEs D and G-J; Tr. 105-106) He expects his earnings to increase with his expected promotions to senior network operations team leader, depending on the outcome of his proceeding. (Tr. 26-32, 146-147)

E-QIP omissions

Applicant completed two e-QIPs, one in June 2015 and another in November 2015. (GE 1 and AE B; Tr. 97-98, 101-103) In his first e-QIP of June 2015 he listed his withholding order for State A, but not for State B. (GE 1 and AE B) After completing his June 2015 e-QIP (AE B), he received a July 2015 email from his facility clearance office (FC) informing him of breaches in OPM's data base that could adversely affect submitted e-QIPs. (AE F; Tr. 94-95, 110).

Based on this received information from his FC, Applicant submitted an updated e-QIP in November 2015. (GE 1). In this follow-up e-QIP, he mistakenly assumed all of his previous information was incorporated in his revised November 2015 e-QIP and omitted information about his withholding orders. (Tr. 94-99)

Applicant attributed his e-QIP omissions to inadvertence with respect to his state's child support delinquencies and unawareness of his being then delinquent with any of his State B's child support payments. (GE 3; Tr. 52-53, 98, 103-104, 107-108, and 112-113) Because he was never afforded an earlier opportunity by the OPM investigator who interviewed him in August 2017 to voluntarily explain his payment history with States A and B, he was never in a position to identify the mistaken allocations in his State A withholding order and take corrective measures. (GE 3 and AEs C and H-J; Tr. 98-99, 102-105, and 131-134)

Applicant's explanations are corroborated and substantiated by his hearing testimony and voluntary responses he provided the OPM investigator who interviewed him in August 2017. (GE 3; Tr. 98-99) Based on the evidence presented, allegations of falsification are unsubstantiated.

Character references

Applicant is well-regarded by senior management, supervisors, and colleagues. Who are familiar with his work and demonstrated character (AE K; Tr. 30-33, 42-45, 61-66,and 80-81) They credit him with being a valued employee, a member of his company's leadership cadre, and a senior network operations team leader, who regularly deploys to various training ranges and trains other team leaders. (AE K; Tr. 30-33, 42-45, and 61-66)

Applicant's supervisors and current facility security officer (FSO) are fully aware of his clearance situation, and do not believe he has acted dishonestly or with any intent to

deceive the Government. (Tr. 41, 45-46, 52-60, and 80-81) They uniformly consider Applicant to be honest, trustworthy, and dependable.

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 chances; (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 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 accumulation of delinquent child support withholding orders in States A and B. Additional security concerns are raised in connection with Applicant's omissions of his delinquent child support orders in the e-QIP he completed in November 2015.

Financial concerns

Applicant's delinquent child support payments compiled in States A and B 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." His delinquencies resulted in initiated withholding orders in States A and B that remain in force.

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 cited layoffs and unawareness of garnishment actions taken by State B accounted for much of the problems associated with his delinquencies in States A and B. Not until an October 2017 OPM interview did he learn of the misapplications of his withheld pay from his military retirement accounts.

After learning of the misapplications of child support withholding from his military retirement account from the OPM investigator who interviewed him, Applicant took prompt corrective actions with both states. He has carefully documented his enlistment of State A court resources to correct the state's misapplication of garnished funds from Applicant's military retirement account and restore proper State A/State B allocations of Applicant's withheld monies from Applicant's garnished military retirement account. 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.

Applicant's corrective steps also enable him to claim the full mitigation benefits of the "acting responsibly" prong of MC ¶ 20(b), as well as the benefits of other applicable mitigating conditions. 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)).

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 delinquent child support withholding orders and resolved them with corrective payment applications covering his child support withholding in States A and B and is now current with both SOR ¶¶ 1.a and 1.b accounts.

Personal conduct concerns

Allegations covering Applicant's omissions of his child support withholding orders in the e-QIP he completed in November 2015 are successfully refuted by Applicant's credible explanations of his omissions of both withholding orders. Inadvertence and unawareness are both cited as reasons for his omissions.

Applicant's explanations for his omissions are credible ones and are accepted. Based on the evidence presented, allegations of falsification are unsubstantiated.

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 State A and State B 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.b. and 2.a. 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.b: For Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subparagraphs 2.a: 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