



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 17-04378

Appearances

For Government: Jeff Nagel, Esq., Department Counsel

For Applicant: *Pro se*

06/25/2018

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 January 9, 2018, 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), effective June 8, 2017, by Directive 4 of the Security Executive Agent Directive (SEAD 4), dated December 10, 2016, entitled *National Security Adjudicative Guidelines* for all covered individuals who

require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position.

Applicant responded to the SOR on February 2, 2018, and requested a hearing. The case was assigned to me on March 19, 2018, and scheduled for hearing on April 18, 2018. The Government's case consisted of six exhibits (GEs 1-6) Applicant relied on one witness (himself) and two exhibits. (AEs A-B) The transcript was received on May 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 documented payments. 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 supplemented the record with a documented payment summary. Applicant's submission was admitted as AE C.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated seven delinquent debts exceeding \$14,000. Allegedly, these debts have not been addressed. In his response to the SOR, Applicant admitted each of the allegations without explanations.

Findings of Fact

Applicant is a 58-year-old electrician 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 his first wife in June 1980 and divorced her in June 1999 and has two adult stepchildren from this marriage. (GE 1) Applicant earned a high school diploma in 1977 and reported no post-high school education credits. (GEs 1-2) He enlisted in the Air Force (AF) in February 1979 and served nine years of active duty. (GEs 1-2; Tr. 32) He received an honorable discharge in June 1982. Between March 1985 and March 1990, he served in the AF Active Reserve. (GEs 1-2) He continued his military service with his state's Air National Guard, reporting active reserve service between October 1992 and November 1993 and an honorable discharge. (GE 2) Between November 1993 and October 1998, Applicant served in the AF Active Reserve and received an honorable discharge in October 1998. (GE 1)

Since May 2007, Applicant has been employed by his current employer. (GEs 1-2) Between June 2005 and May 2007, he was employed by a non-military employer as an electrician. (GE 2)

Finances

Between July 2014 and June 2015, Applicant accumulated seven delinquent accounts exceeding \$14,000. (GEs 5-7) He attributed his delinquencies to relocation, reduced earnings, his insurance company's failure to cover his SOR ¶ 1.a medical debt associated to the repair of his broken leg, and his own failure to cover his co-pays on the smaller medical debts. (GE 2; Tr. 33-35). Applicant has since paid or resolved by payment plan all but one of the listed debts in the SOR (i.e, SOR debt ¶ 1.g for \$25 that he cannot locate). (AEs A-C; Tr. 31-32) Debts paid in full are comprised of the following: SOR debts ¶¶ 1.b for \$367, 1.c for \$196, 1.d for \$123, 1.e for \$90, and 1.f for \$28. (AEs A-C; Tr. 31, 36-39)

SOR debt ¶ 1.a covers a medical account that Applicant opened in April 2012. (GE 5). Until recently, Applicant had not addressed this account, and it remained delinquent and outstanding. While Applicant assured he had entered into a repayment plan, he provided no documentation of his plan. (AEs A-B; Tr. 31) He did, however, provide a brief payment summary of creditors he has addressed and cited to the \$100 payment he made to the creditor in February 2018 as evidence of his good-faith efforts to settle the account. (AE C) While a concrete payment plan detailing the payment arrangement and historical accounting of the payments he claims to have made to creditor 1.a would have helped to validate his payment arrangement with SOR creditor ¶ 1.a, his supplied payment information on the only major debt he has not paid or otherwise resolved in full is enough to warrant acceptance of his oral assurances.

Applicant assured that he would like to pay off his creditor 1.a medical debt and is exploring the availability of home equity financing. (Tr. 37) Currently, he has no 401(k) account or other retirement account to draw upon at this time. (Tr. 39) He keeps his other accounts current and is putting aside monthly savings to cover any unforeseen debts that arise. (Tr. 40)

Policies

The SEAD 4, Appendix (App.) 4 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.

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 accumulating delinquent medical and consumer debts over a two-year period spanning July 2014 and June 2015. Applicant's accumulation of delinquent medical and consumer accounts warrant the application of three of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), “inability to satisfy debts,” and DC ¶ 19(c), “a history of not meeting financial obligations.”

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also implicit in financial cases.

Applicant's addressing his listed medical and consumer debts merit the application of several available mitigating conditions. His resolved debt delinquencies permit him to meet the relevant Appeal Board's requirements for demonstrating financial stability. See ISCR Case No. 07-06482 (App. Bd. May 21 2008); see also ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007)(citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000)); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999). Except for one small debt (creditor 1.g for \$28), all of his listed creditors have either been paid or are being resolved through a repayment plan with the creditor (i.e., creditor 1.a)

From a whole-person standpoint, Applicant's contributions to the defense industry are worthy of respect. Coupled with his positive repayment initiatives, they are sufficient to overcome security concerns associated with his history of delinquent

medical and consumer debts. Considering all of the circumstances surrounding Applicant's addressed delinquent debts, favorable conclusions are warranted with respect to listed SOR debts ¶¶ 1.a-1.g of Guideline F.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas. 1.a-1.g: 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 security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

