



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-02013

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro se*

05/31/2016

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On September 25, 2015, 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 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) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on November 19, 2015, and requested a hearing. The case was assigned to me on January 19, 2016, and was scheduled for hearing on February 4, 2016. At hearing, the Government's case consisted of six evidentiary exhibits (GEs 1-6) and a hearing exhibit (HE 1) covering the listed debts in the SOR and their status. Applicant relied on one witness (himself) and 11 exhibits (AEs A-N). The transcript (Tr.) was received on February 12, 2016.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open for 30 days to permit him the opportunity to supplement the record with the documented status of a state tax judgment, Department of Education (DOE) student loan credits, bank statements for checking and savings accounts, a monthly budget, and a disputed SOR creditor 1.j debt. For good cause shown, Applicant was granted 30 days to March 3, 2016, to supplement the record.

Within the time permitted to supplement the record, Applicant timely documented a cover letter, excerpts from a recent credit report, bank account statements, wire transfers, a checking account statement, a certificate of state tax liability, a state treasury statement, correspondence from a debt repair firm, a pay stub, an updated credit report, excerpts from a checking account statement, and a memorandum confirming Applicant's grant of a security clearance in 2003. Applicant's post-hearing submissions were admitted without objection as AEs O through II. Applicant asked for additional time to add additional documentation of state tax issues. Granted additional time to May 13, 2016 to supplement the record, Applicant provided timely explanatory emails and documented. payments made to the creditor 1.a alleged in the SOR for tax years 2001 and 2002. These post-hearing submissions were admitted without objection as AEs JJ-MM.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated (a) a state judgment entered in 2005 for \$7,423 for unpaid state taxes; (b) 13 student loan debts exceeding \$51,000; and (c) a consumer debt of \$32. Allegedly, all of the debts remain outstanding.

In his response to the SOR, Applicant denied each of the listed debts. He claimed someone hacked into his bank account in November 2007, which necessitated his dropping his direct deposit of his student loan payments, and resulted in his missing two months of loan payments. Applicant explained that he paid off the U.S. Department of Education (DOE) student loan in March 2015. And he claimed the state tax judgment never happened and cannot be justified.

Findings of Fact

Applicant is a 59-year-old flight-simulator operator for a defense contractor who seeks a security clearance. The allegations covered in the SOR were denied by Applicant and placed in issue. Findings follow.

Background

Applicant married in October 1985 and divorced his wife in October 1988. (GEs 1-2; Tr. 24) He has two adult children (ages 26 and 28) from this marriage. He has not remarried. Applicant earned an associate's degree in applied science electronics in February 1998. (GEs 1-2 and AE N; Tr. 22) He enlisted in the Army in July 1981 and served four years of active duty. (GEs 1-2) Between July 1985 and July 1988, he served in the inactive reserve and received an honorable discharge in July 1988. (GEs 1-2; Tr. 23)

Applicant has worked for his current employer since December 2005 as a flight-simulator operator. (GE 1; Tr. 23) Previously, he was employed by other contractors with no breaks in service between at least January 2001 and the present. He held a security clearance between 2003 and 2012 and has never been cited for any security violation. (GE 1 and AE II; Tr. 25)

Applicant's finances

Between 1995 and 2013, Applicant accumulated a number of delinquent debts. One of the debts is a state tax judgment that was reduced to a judgment by default in December 2005 in the amount of \$7,423. (GEs 3-6) A certificate of tax liability was issued in December 2005, covering tax years 2001 and 2002. This certificate assessed Applicant for \$3,566 for tax year 2001 and \$3,856 for tax year 2002. (AEs H and T) Applicant acknowledged his not filing state tax returns for these two tax years while under the impression he was likely to receive tax refunds for both years and was therefore not required to file state tax returns for these years. (Tr. 53-54)

Records document that the state taxing authority garnished Applicant's wages for a number of months while he was still employed in the taxing state. (GE 1 and AE V; Tr. 52) State garnishment initiatives ceased once Applicant relocated to his current state of residence in March 2006. (GE 1 and AE V)

Applicant disputes the creditor 1.a tax judgment debt and provided a copy of his 2002 state tax return showing a \$107 amount due to corroborate his claims. (AE F) Evidence supporting the state's tax liability certificate and ensuing state judgment is lacking, and Applicant's visits to the state taxing authority to resolve the tax issue were unsuccessful. (GE 2 and AE H) Applicant has since made two small payments on the taxing state's 1995 judgment to the state's taxing authority: one for \$146, covering tax year 2001, and one for \$111, covering tax year 2002. (AE LL)

Credit reports do not indicate whether the taxing state (creditor 1.a) ever filed suit (timely or otherwise) for renewal of its judgment before its expiration in December 2015. Without clarifying evidence of the current status of the creditor 1.a tax judgment, no inferences can, or should, be drawn of the judgment holder's continuing enforcement entitlement after the expiration of its 2005 judgment in December 2015. (AEs LL-MM)

. Applicant accumulated a number of other delinquent debts. Except for one disputed \$32 consumer debt (creditor 1.i), all of Applicant's listed debts involve student loans. These listed debts, 13 in all (creditors 1.b through 1.q), exceed \$51,000 in aggregate student-loan debt. These listed delinquent student loans (owned by creditors 1.b-1.h) were originated between January 1996 and November 1997 while Applicant was in college. Prior to 2002, these student loans were subject to forbearance protections, while they continued to accrue interest. (AE C)

Asked about his delinquent student loans in a December 2012 interview with an agent of the Office of Personnel Management (OPM), Applicant told the agent all of the listed DOE accounts were linked to the same student loan. (GE 6) After learning that the loan accounts were subject to variable interest rates that he disputed, and after paying over \$8,000 on the loans, Applicant stopped paying on the accounts in 2008. (GEs 1-6 and AEs AA-DD)

In 2010, the DOE briefly garnished his wages for unpaid student loans. (GEs 1 and 7) He has since engaged a debt repair firm to help him resolve his student-loan disputes (GE 6 and AE Y). His most recent credit reports reflect that these individual student loan-accounts (creditors 1.b through 1.h) have been paid and closed out. (AEs I-J and GG)

Applicant disputes the remaining listed student loan accounts (i.e., listed creditors 1.j through 1.p). Credit reports demonstrate that these seven disputed accounts match the loan numbers listed for creditors 1.b through 1.h and are duplicates of the paid accounts covered by subparagraphs 1.b through 1.h of the SOR. (AEs I-J and GG; Tr. 35-51) With these listed student-loan accounts eliminated as duplicates, Applicant's student-loan debts covered in the SOR are documented as fully paid and resolved. (AEs I-J and GG)

Applicant's only other listed delinquent debt is a reported \$32 consumer debt (creditor 1.i) that Applicant disputes. (GEs 1 and 3-6) He claimed no knowledge of the account and has never received any correspondence from the creditor. (AE 6) He assured the interviewing OPM agent in his 2012 interview that he bought a computer disc (CD) from the merchant creditor and paid for the item. Subsequently, the creditor shipped him a second CD that he never purchased or ordered. He considered the second CD to be a gift and never remitted payment for the item. (AG 6) Whether Applicant ever contacted the creditor to question the shipping of the second CD, or returned the item, is unclear. (GE 6)

Endorsements

Applicant received a number of meritorious certificates and awards while on active military duty. While in military service, Applicant earned certificates of achievement and service recognizing his military service contributions. (AE M) Applicant earned training certificates from employers following his active duty discharge. (AE N)

Policies

The AGs list 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 "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

Each of these conditions 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 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 AG ¶ 2(a) 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling . . . 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 Executive Order 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

Initial security concerns are raised over Applicant’s history of delinquent debts (mostly state tax and student-loan debts) that Applicant had not previously addressed before March 2015. Since receiving the SOR, Applicant provided documentation of his paying or otherwise resolving or disputing his remaining debts.

Of the listed debts covered in the SOR, Applicant denied all of them, claiming he had paid the outstanding student debts and disputed the remaining two debts (i.e., creditors 1.a and 1.i). Based on the reported information supplied by Applicant and the credit reporting agencies, the evidence is sufficient to warrant the application of two of the disqualifying conditions (DC) of the Guidelines: DC ¶ 19(a), “inability or unwillingness 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 explicit in financial cases.

Applicant's listed delinquent debts were reported in a series of credit reports issued between April 2006 and April 2015. (GEs 3-5 and 7) Credit reports do create presumptions of authenticity and accuracy. The Appeal Board has explained that credit reports can "normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations." ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010)

The Government's admitted credit reports bear both Applicant's name and social security number and are entitled to some weight. This presumption of authority and accuracy that attaches to credit reports is rebuttable, though, and in Applicant's case is rebutted by stipulated proofs that seven of the listed student-loan debts (i.e., creditors 1.j through 1.p) are duplicates of the listed student-loan debts that have since been paid. (i.e., creditors 1.b through 1.h)

Considering all of the circumstances surrounding the origination, delinquency, and good-faith payment of his listed student-loan debts, Applicant is entitled to the benefits of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant's established payment in full of all of his unduplicated student loan debts entitles him to full credit of MC ¶ 20(d). Although, Applicant's student-loan debts were not based on any material circumstances that could be characterized as extenuating. As a result, application of 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" is not available to Applicant.

Applicant's only listed debts not paid or otherwise resolved are the \$7,423 judgment debt covered by subparagraph 1.a and the small \$32 consumer debt covered by subparagraph 1.i. Applicant disputes both of these debts. Addressing the creditor 1.a judgment debt, Applicant documented a substantial reduction in the judgment before he relocated to his current state and avoided any further garnishment initiatives by the judgment creditor. His confirmed tax payments to creditor 1.a in 2016 (i.e., \$146 for 2001 and \$111 for 2002) are consistent with his understanding of his tax obligations for tax years 2001 and 2002 and reinforce the good-faith basis of his dispute of the tax judgment he disputes.

Further, under the state taxing jurisdiction's governing law, entered judgments retain a ten-year enforcement life. See State A Gen. Stat. § 1-47(1) Case law construing

Section 1-47(1) hold the ten-year enforcement period to be strictly binding on the judgment creditor and leave no room for tolling. See, e.g., *Powers v. Kandrasiwicz*, 886 F. Supp. 1261 (WD State A 1995)

Failure of the judgment creditor 1.a to file a new suit to renew an expiring judgment before the expiration of the expiring judgment precludes any further judgment collection efforts on the judgment by the creditor. By failing to take any collection action on its judgment before the expiration of the judgment in December 2015, the judgment expired by operation of law and can no longer sustain collection efforts by the creditor 1.a judgment holder.

Whether state judgment creditor 1.a declined to use available enforcement resources to collect on its judgment before its expiration due to (a) Applicant's relocation; (b) the creditor's agreement with Applicant's tax filing claims and ensuing payments, or (c) for some other reason is not clear from the record. Still, Applicant's dispute of the creditor 1.a judgment under all of the circumstances considered is reasonably based and enables him to claim successful dispute of the creditor 1.a judgment.

Besides the 1.a state judgment debt, Applicant disputes the \$32 consumer debt covered by subparagraph 1.i of the SOR. His dispute of this claim on the grounds that he paid for the covered CD item and never ordered a second CD has merit. His dispute is reasonably based and enables him to claim a successful dispute of the creditor 1.i. Based on his credible showing, 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," fully applies to Applicant's situation.

From a whole-person standpoint, Applicant documents a meritorious record of military and civilian service. His credits include earned certificates of achievement and service recognizing his military service contributions, as well as training certificates from employers following his active duty discharge. To his credit, Applicant has shown payment progress with his student loans and successful disputes of his remaining two listed debts. Favorable conclusions are warranted with respect to the allegations 1.a through 1.q covered by Guideline F.

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

Subparas. 1.a through 1.q:

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

