



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 19-02585
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Department Counsel
For Applicant: *Pro se*

06/02/2020

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate finance concerns relating to his accumulated debts. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On November 25, 2019, Department of Defense (DoD) Consolidated Central Adjudication Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD could not make the preliminary affirmative determination of eligibility for granting 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); DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on December 11, 2019, and elected to have his case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on January 22, 2010, and interposed no objections to the materials in the FORM. He did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly is indebted to three creditors: one for child support arrears in the approximate amount of \$40,000; one for a charged-off credit card debt in the approximate amount of \$23,851; and another for a charged-off credit card debt in the approximate amount of \$15,307. (Item 1) Allegedly, these delinquent debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted all of the allegations of indebtedness with explanations. He claimed his child support arrears are owed to his ex-wife and not the state of her residence. He claimed he took a job in March 2015 in another state that pays much less (by about 40%) than his previous job, so that he be closer to his family. With his reduced income, he claimed he has not been able to keep up with his financial obligations. Additionally, he claimed his intentions are to pay off his debts “no matter how long it takes.” (Item 2)

Findings of Fact

Applicant is a 50-year-old aviator 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 1996 and divorced in May 2009. (Item 3) He has three children from this marriage (ages 20, 17, and 15). He remarried in October 2012 and has five stepchildren from this marriage (ages 39, 28, 18, 15, and 12). (Item 2) Applicant earned a bachelor’s degree in June 1994. He joined the Air Force in June 1994 following his college graduation and served 10 years of active duty and four years of active reserve before receiving his honorable discharge in October 2008. (Item 8)

Since February 2017, Applicant has been employed as an aviator by his current defense contractor. (Items 3 and 4) Between March 2015 and January 2017, he was employed by another company in the same capacity, located in a state closer to his current state of residence. GE 1; Tr. 140) And, between March 2008 and March 2015, he was employed by other employers as an aviator in other states much farther away from his current state of employment and residence. (Items 3-4)

Applicant’s finances

In March 2015, Applicant took a lower paying aviator’s position in a state much closer to his current state of residence to be nearer to his wife and children. (Items 1-4)

With this lower paying position, he encountered difficulties keeping up with his child support and consumer obligations and fell behind in his payment responsibilities. (Items 1-4)

In an effort to address his child support arrears (in excess of \$40,000), Applicant applied in 2015 to his state's child services agency for an adjustment to his ordered child support payments. (Items 2-4) While waiting for a child support reduction decision from the enforcing state agency, he ceased making payments on his child support obligations altogether. Credit reports confirm that he has been delinquent with two credit card accounts listed in the SOR, ¶¶ 1.b (\$23,851) and 1.c (\$15,307), since April 2016 and November 2017, respectively. Both credit card accounts have since been charged off.

Until Applicant finds a higher paying job, he is not financially positioned to address either his child support arrears or his charged-off credit card delinquencies. (Items 2-4) While he remains committed to addressing these debts when he finds a better paying job, he has provided no updates on his job searches. He provided no evidence of financial counseling or budgeting.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA 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 all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive

reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on 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.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors: (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 of 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 herein:

Financial Considerations

The Concern: Failure or inability to live within one's means, satisfy debts and meet financial obligation may indicate poor self-control, lack of judgment, or unwillingness to abide by rules or regulations, all of which can raise questions about an applicant'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.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be

a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s accumulation of child support arrears and two charged-off credit card debts. Applicant’s history of financial difficulties warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts” and 19(c), “a history of not meeting financial obligations.” Both of these DCs apply to Applicant’s situation.

Applicant’s admitted child support arrears and delinquent credit card debts negate the need for any independent proof. See Directive 5220.6 at E3. 1.1.14; McCormick on Evidence, § 262 (6th ed. 2006) each of Applicant’s admitted debts is fully documented and creates some judgment issues. See ISCR Case No. 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 the person to access classified information. While the principal concern of a security clearance holder’s demonstrated difficulties is vulnerability to coercion and influence, judgment, and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of addressing and resolving debt 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 circumstances (reduced income from the lower paying job he accepted to be closer to his family) provide some extenuating benefit. While mitigating condition (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," has some application to Applicant's debt situation, it is not enough by itself to satisfy minimum eligibility requirements for holding a security clearance.

Because Applicant has failed to undertake any affirmative steps to address his child support arrears and charged-off credit card debts in the years since they became delinquent, or provide more detailed and convincing explanations of why he has not been able to address them, mitigating credit cannot be extended to him under any of the potentially available mitigating conditions. MC ¶ 20(b) has only very limited availability in light of his documented failure to initiate any efforts (modest or otherwise) to address his delinquent obligations with the income available to him from his lower paying aviator assignments.

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 the voluntary payment of debts, and implicitly where applicable the timely resolution of delinquent debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, he has failed to take any steps to address his child support arrears and two charged-off credit cards. His failure to initiate even minimum payment efforts with the resources available to him preclude favorable findings and conclusions with respect to raised security concerns over the state of his finances.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with the minimum standards for holding a clearance. While Applicant is entitled to considerable credit for his military contributions to the Air Force and continued service as a civil aviator, his efforts are not enough at this time to overcome his inability to maintain his finances in a sufficiently stable manner to meet the minimum requirements for holding a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Guideline E (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a through 1.c: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge