



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



In the matter of:)
)
-----) ISCR Case No. 19-02767
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

07/21/2020

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On January 24, 2020, the Department of Defense (DoD) Consolidated Central Adjudications 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); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); 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 February 25, 2020, and elected to have his case decided on the basis of the written record, in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on April 28, 2020, and interposed no objections to the materials in the FORM. He did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated 15 delinquent debts exceeding \$27,000 and (b) failed to file state tax returns for tax years 2010 through 2018 and is indebted to the state for delinquent taxes in the amount of \$275 for tax year 2016. Allegedly, Applicant's debts and unfiled state tax returns remain unresolved.

In his response to the SOR, Applicant admitted all of the allegations covering delinquent debts and failure to file state tax returns for tax years 2010 through 2018, but denied allegations that he is indebted for delinquent taxes owed for tax year 2016. He provided no explanations for any of the debts covered by ¶¶ 1.a-1-o, but claimed he paid in full all state taxes owing for prior tax years with his 2019 state income tax return.

Findings of Fact

Applicant is a 51-year-old instructor 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 August 1995 and separated in May 2002. (Item 3) He has one adult child from this marriage. Applicant earned an associate's degree from a business college in September 2002. (Item 3) He enlisted in the U.S. Army in February 1987 and served eight and one-half years. (Item 3) He received in August 1997 for reported medical reasons. (Item 3) Since February 2011, Applicant has been employed as an instructor for a defense contractor. (Item 3) He reported unemployment between November 2010 and February 2011 and worked for various non-defense contractors between 1997 and 2010. (Item 3) Applicant held a security clearance during his Army enlistment at the level of secret. (Item 3)

Applicant's finances

Between November 2011 and May 2019, Applicant accumulated 15 delinquent debts exceeding \$27,000. (Items 4-6) He provided no documentation showing that he has addressed any of these listed accounts, and they remain unresolved and outstanding. Records also confirm that Applicant failed to file state income tax returns for tax years 2010 through 2018. While he claims to have paid the only tax debt owing to the state (i.e., the sum of \$275) with his 2019 state tax return, he provided no documentation of any amounts paid or owing and since resolved. He attributed his failures to file state income tax returns to his beliefs that he did not owe anything. (Item 4) Undetermined at this time is whether Applicant ever filed state tax returns for the tax

years stated (2010-2018) and whether he owes any monies for these tax years. Without documentation of filing his returns for these years and paying any amounts owing, he cannot be credited with resolving any of the tax issues raised in the SOR.

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(d) 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 obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules or 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 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 delinquent debts (including a \$275 state tax debt) and multiple failures to file his state tax returns. Applicant’s history of financial difficulties warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”: 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.” Each of these DCs apply to Applicant’s situation.

Applicant’s admitted debt delinquencies and failures to file his state tax returns as required (tax years 2010-2018) negate the need for any independent proof. See Directive 5220.6 at E3. 1.1.14; McCormick on Evidence, § 262 (6th ed. 2006) His admitted debts and tax filing lapses are fully documented and create 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 and tax return filing lapses.

Historically, the timing of addressing and resolving tax filing failures and 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 multiple failures to file his state tax returns as required and debt delinquencies he accumulated over a period of years that he has failed to resolve preclude his taking advantage of any of the potentially available extenuating benefits. Because Applicant has failed to provide any documented evidence of his timely filing of state tax returns for years 2010-2018, or initiated efforts to resolve his admitted delinquent debts, mitigating credit cannot be extended under any of the potentially available mitigating conditions.

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 tax-related and other debts, and implicitly where applicable the timely resolution of such debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant’s case, he has failed to take any documented steps to address his accumulated delinquent debts or provide documented evidence of his timely filing of his state tax returns for tax years 2010-2018 and provide proofs of his addressing his delinquent debts in issue.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a clearance. While Applicant is entitled to credit for his civilian contributions to the defense industry, his efforts are not enough at this time to overcome his state tax-filing lapses and failures to resolve his accumulated debt delinquencies. His failures to address and resolve his state tax-filing lapses and accumulated debt delinquencies reflect adversely on his ability 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 F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1-p:

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