



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



In the matter of:)
)
-----) ISCR Case No. 19-03635
)
Applicant for Security Clearance)

Appearances

For Government: Kelley Folks, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2020

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On March 17, 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 and personal conduct guidelines it 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 April 20, 2020, and requested a hearing. A hearing was scheduled for October 15, 2020. The case was heard on the scheduled date. At the hearing, the Government's case consisted of four exhibits (GE): one through four. Applicant relied on no exhibits and one witness (himself). The transcript (Tr.) was received on October 30, 2020.

Procedural Issues

Before the close of the hearing, Applicant requested the proceedings be kept open to permit him the opportunity to supplement the record with post-hearing documentation of his resolving his debts: either by payments or having them removed from his credit report. (Tr. 16-18) For good cause shown, applicant was granted 30 days to supplement the record. Department Counsel was afforded five days to respond. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four delinquent debts that exceed \$22,000. Allegedly, these debts remain unresolved and outstanding.

Under Guideline E, Applicant allegedly falsified his July 2018 electronic questionnaires for electronic processing (e-QIP) by omitting his delinquent accounts detailed in sub-paragraphs 1.a-1.d of the SOR.

In his response to the SOR, Applicant denied the alleged debts covered by SOR ¶¶ 1.a-1.c, claiming that each of the allegations have either been paid or should be settled and removed from his credit report. He admitted the allegations covered by SOR ¶ 1.d, with explanations. Addressing the allegations covered in SOR ¶ 2.a, Applicant denied the allegations pertaining to falsification, claiming he could not recall what was on his credit report and did not deliberately falsify material facts.

Findings of Fact

Applicant is a 47-year-old network engineer for a defense contractor who seeks a security clearance. The allegations covered in SOR ¶ 1.d and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in October 2020 and has two children predating his marriage. (GE 1; Tr. 24-25) Applicant earned a general educational development (GED) diploma in 1992 and has not earned any college credits. (GE 1; Tr. 25-26) He reported no military service.

Since December 2016, Applicant has been employed by his current employer. Between March 2009 and December 2016, he worked for a non-defense contractor as a motor coach operator. Tr. 25-26) Applicant commented that his current job does not

require a security clearance, but he needs the clearance to be able to move to a higher paying position within his company. (Tr. 23-24)

Applicant's finances

Between July 2018 and November 2019, Applicant accumulated four delinquent debts exceeding \$22,000, according to his recent credit reports. (GEs 2-5; Tr. 15-16) He disputed three of the debts (SOR debts ¶¶ 1.a-1.c) at hearing, claiming they either were paid or should be removed from his credit report. (Tr. 25-26) Applicant attributed his delinquent debts to a lack of money. Further, he disputed the debts allegedly owed to SOR creditors 1.a-1.c. (GEs 2-5; Tr. 27, 30) He pledged to look into these debts covered by the SOR and either take care of them or have them removed from his credit report. (GE 2; Tr. 16-17, 32-34) Afforded an opportunity to supplement the record with post-hearing documentation of steps he has taken to address his debts and resolve them by payment or removal from his credit report, Applicant did not provide any additional information.

Based on the credible information developed in Applicant's credit reports, each of the debts listed in the SOR belong to Applicant and remain delinquent and unresolved. Applicant provided neither evidence of payment nor a good-faith dispute of any of the listed SOR debts. His claims of having no financial obligations to the SOR 1.a creditor by virtue of his suffering a total loss of the vehicle covered by the SOR 1.a loan in default are not corroborated and cannot be accepted without supporting documentation. Similarly, his claims that the medical debt covered by SOR ¶ 1.b was never a billable debt to him due to his lack of medical procedure authorization is not documented by any correspondence or other evidence validating his contemporaneous claims. Applicant's lack of recall of the debts covered by SOR ¶¶ 1.c-1.d are not documented with any information that might shed light on his claims. With current annual income of \$45,000 from his current employer, he would appear to have sufficient monetary resources to address some or all of the debts listed in the SOR. (Tr. 26)

E-QIP omissions

Asked to complete an e-QIP in July 2018, Applicant omitted any delinquent debts when responding to questions about his finances covered by Section 26 of the e-QIP. Applicant denied any intent to falsify his e-QIP with omissions of the debts covered by SOR ¶¶ 1.a-1.d. He attributed his negative answers to the questions posed in section 26 of his e-QIP to a lack of recollection "at the time what was in his credit report" (Applicant's response and GEs 1-2) In two follow-up interviews with an agent of the Office of Personnel Management (OPM) in July 2018 and January 2019, respectively, Applicant was asked by the interviewing agent if he had any financial issues, to which he replied in the negative. (GE 2)

After confirming to the investigating OPM agent in his July 2018 personal subject interview that he had no financial issues, the Agent confronted Applicant with three of the debts listed in the SOR (SOR debts 1.a and 1.c-1.d). (GE 2; Tr. 42-43) Once asked about the SOR 1.a car loan, he provided fresh details of the circumstances which he

believed warranted his being excused from payment responsibility. He assured that he had evidence of his dispute with the car lender over his owing any more loan payments on the vehicle that he could provide in post-hearing documentation. Without any additional information to clarify and substantiate his dispute with SOR 1.a creditor, his e-QIP omissions cannot be reconciled as a good-faith misunderstanding about the status of the listed SOR 1.a debt attributed to Applicant. Nor can his explanations about the origins and status of the other three omitted debts listed in the SOR (SOR debts 1.b-1.d) be credited to him as acts of forgetfulness without provided corroborating information (either during or after the completion of the hearing). Based on a thorough consideration of all of the compiled evidence in the record, inferences of candor lapses on the part of Applicant in his omission of the four debts listed in the SOR are warranted.

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.

The AGs 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 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 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.

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 to 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.

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 between 2018 and 2019. Additional security concerns are raised over his omission of his delinquent debts in the e-QIP he completed in July 2018.

Financial concerns

Applicant’s accumulation of four delinquent debts between 2018 and 2019 warrants the application of two disqualifying conditions (DCs) of the financial considerations guideline. DC ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply to Applicant’s situation.

Applicant’s admitted debt covered by SOR ¶ 1.d negates the need for any independent proof. See Directive 5220-6 at E3. 1.1.14; *McCormick on Evidence*, § 262 (6th ed. 2006). His admitted SOR ¶ 1.d debt delinquency is fully documented and creates some initial judgment issues. See ISCR Case No. 03-01059 at 3 App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified and sensitive 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 clearance holder's demonstrated financial 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 a fair assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified 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).

Without more clarifying information about the four delinquent debts listed in his credit reports and covered in the SOR, Applicant is not eligible for mitigation credit. His reported debt delinquencies are both recent and material to a trust assessment of whether Applicant's finances are sufficiently stabilized at this time to meet the eligibility requirements for access to classified or sensitive information.

Considering all of the facts and circumstances in the record, Applicant's accumulation of delinquent debts that have not been since paid, resolved, or successfully disputed are not mitigated. Mitigation preclusion is based on the absence of any furnished information by Applicant documenting his payment, resolution, or reasonable dispute of the debts covered by SOR.

Personal conduct concerns

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the security concerns raised by Applicant's omissions of the debts listed in the SOR in the e-QIP he completed in July 2018. So much trust is imposed on those cleared to access classified and sensitive information that accommodations for breaches are necessarily narrowly calibrated. See *Snepp v. United States*, 444 U.S. 506, 511 n.6 (1980).

Material breaches of an applicant's disclosure responsibilities in a security clearance application are, in turn, incompatible with the high trust principles affirmed in *Snepp*. Applicant's failure to provide any documented explanations of the debts he claims are disputed when afforded a post-hearing opportunity to do so only serves to reinforce the Government's claims that he omitted his debts in the e-QIP he completed out of concern that disclosure could impact assessments of his security clearance eligibility.

Applicant's 2018 e-QIP omissions invite application of one of the disqualifying conditions (DCs) of the personal conduct guidelines (DCs) DC ¶¶ (16(a), "deliberate omission, concealment, or falsification or relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status,

determine national security eligibility or trustworthiness, or award fiduciary responsibilities,” applies to Applicant’s situation. Based on all of the information considered in connection with his omitted debt delinquencies in the space provided in section 26 of the e-QIP he completed in 2018, candor lapses are reflected in Applicant’s delinquent debt omissions.

Afforded an opportunity to provide explanatory documentation in his scheduled 2018 and 2019 OPM interview, Applicant told the OPM investigator that he had no additional financial issues to discuss. At this point, he was confronted with three of the four debts covered in the SOR. His answers reflected a general recollection of the circumstances surrounding his car loss and amounts owing to his SOR 1.a creditor. His answers to questions asked by the investigator about his SOR 1.c and 1.d debts were updated only after confrontation, and do not reflect any attempt to voluntarily correct his omissions.

Applicant’s failure to provide any supplemental information, when under an imputed duty do so, reflects a continued effort to conceal material information about the state of his finances which he failed to voluntarily correct in his follow-up OPM interview before he was confronted by the interviewing agent with the delinquent covered in the SOR. Applicant’s ensuing failure to provide prompt, good-faith corrections when questioned by the interviewing OPM agent warrants the application of DC ¶ 16(b), “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employee, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government representative, ” to the facts of Applicant’s case. Without documentation of his disputes of the SOR debts in issue, inferences and conclusions of candor lapses cannot be averted.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether his accumulated delinquent debts between 2018 and 2019 and e-QIP omissions reflect material breaches of the clearance eligibility requires of good judgment, reliability, and trustworthiness that are sufficient to preclude an overall assessment of clearance eligibility.

At this time, it is simply too soon to make safe predictive judgments about Applicant’s ability to safeguard classified and sensitive information. Potentially applicable mitigating conditions are not available to Applicant. While Applicant is entitled to credit for his contributions to his employer and the U.S. defense effort generally, his efforts are not enough at this time to overcome the raised security concerns over the state of his finances and overall honesty and trustworthiness questions associated with his e-QIP omissions.

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 that financial and personal conduct 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:

Paragraph 1, GUIDELINE F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Paragraph 2. GUIDELINE E:	AGAINST APPLICANT
Subparagraph 2.a:	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