



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 20-00259  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*  
03/26/2021

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did no mitigate financial concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On October 7, 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 October 27, 2020 and elected to have her case decided on the basis of the written record, in lieu of a hearing. Applicant received

the File of Relevant Material (FORM) on December 28, 2020, and interposed no objections to the materials in the FORM. She did not supplement the record.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated seven delinquent debts exceeding \$48,000: consumer, student loan, and federal and state tax debts. Allegedly, these debts remain unresolved and outstanding.

In her response to the SOR, Applicant admitted each of the listed debts with explanations. She claimed her consumer debts (SOR ¶ 1.a and 1.d-1.e) were discharged in her recent 2020 bankruptcy proceeding. (Item 1, attachment to Applicant's response) Addressing her delinquent student loan debts (SOR ¶¶ 1.b-1.c), she claimed she is making payments on her student loans since the discharge of her bankruptcy.

Applicant further claimed that she and her husband have been paying their joint federal tax debts owed for tax years 2015, 2017, and 2018 (SOR ¶ 1.f) through voluntary payments and IRS application of a scheduled refund for tax year 2015 to past-owed taxes. (Item 1, attachments to Applicant's response) And, Applicant further claimed that she and her husband have been making payments on their delinquent joint state tax debts for tax years 2015, 2017, and 2018, and have since paid off all of the taxes owed to the state taxing authority. Applicant attached supporting documentation to her responses.

### **Findings of Fact**

Applicant is a 45-year-old configuration management specialist 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 December 1999 and separated in 2012. (Items 2-3) She filed for divorce in January 2014 and is still trying to work out their spousal differences amiably. (Item 3) She has one child from their marriage, age 11. (Item 2) Applicant earned a high school diploma in January 1993 and attended college classes at a local community college between January 1993 and June 2000. (Item 2) She earned an associate's degree in June 2000. (Item 2). Applicant reported no military service.(Item 2)

Since March 2010, Applicant has been employed as a legal secretary for a county district attorney's office in her state of residence. Contemporaneously with this employment, she has been hired as a configuration management specialist, contingent upon her obtaining a security clearance. (Item 2) She worked for non-defense

contractors between April 2008 and March 2010 in various job capacities. Applicant has never previously applied for or held a security clearance. (Item 2)

### **Applicant's finances**

Applicant and her husband accumulated delinquent federal and state taxes for tax years 2015 and 2017-2018. (Item 3) Records document that she owed delinquent federal taxes for tax years 2015, 2017, and 2018 in the aggregate amount of \$2,000. (Items 2-3) She accrued comparable delinquent taxes (\$2,000) owed to her state of residence for the same tax years of 2015 and 2017-2018.

Applicant attributed her federal and state tax delinquencies to confusion and uncertainty over how to file her joint federal and state tax returns for the years in issue without her husband's cooperation. (Items 2-3) Evidently, she did not consult a tax counselor until 2019. (Item 1, attachment to Applicant's response)

In 2017, Applicant leased a vehicle for \$31,000 that carried monthly lease payments of \$480. (Items 3-5) After being denied her request to the leasing to return the vehicle without charge due to mechanical issues, Applicant returned the vehicle anyway to the dealership in February 2017. (Item 3) She reported that the dealership accepted her return and informed her that she still owed \$9,939 on the sales balance on the vehicle. (Items 3-5)

In February 2019, Applicant filed for Chapter 7 bankruptcy protection. (Item 1) She received her bankruptcy discharge in September 2020. (Item 1, attachment to Applicant's response) She claimed without any schedule documentation that her three listed delinquent consumer debts listed in the SOR (¶¶ 1.a and 1.d-1.e) were discharged in her 2020 Chapter 7 bankruptcy. (Item 1, attachment to Applicant's response) Without the included creditor schedules, discharge of these three SOR consumer debts cannot be verified and credited to Applicant.

Claiming her delinquent federal tax debts for tax years 2015, 2017, and 2018 were set off by the Internal Revenue Service (IRS) in 2019 by applying an earmarked refund for tax year 2015 to the owed taxes for tax year 2015, Applicant documented an installment agreement she completed with the IRS that left a \$2,000 balance owing to the service. (Item 1, attachments to Applicant's response). With the applied refund to the balance owing for the 2015 tax year credited, Applicant was left with a balance owing for 2015 in the amount of \$551. (Item 1, attachment to Applicant's response) Whether any remaining federal taxes are owed for tax year 2015 is not clear from Applicant's submissions.

Applicant also supplied a payment summary from the IRS documenting monthly payments of \$200 between November 2019 and May 2020 (totaling \$1,400) that the IRS applied to Applicant's carried forward balance for tax year 2017. (Item 1, attachment to Applicant's response) Whether these payments were covered by an installment agreement with the IRS is unclear. Questions remain, too, over whether

Applicant is still indebted to the IRS for back taxes owed for any or all of tax years 2015, 2017 and 2018.

Addressing the admitted SOR allegation (SOR ¶ 1.g) that she owes \$2,000 in delinquent taxes to her state of residence, Applicant claimed she was making monthly payments on the amount owed (\$2,000) to her state of residence and has since paid all past due taxes owed the state for tax years 2015, 2017, and 2018. (Item 1, attachments to Applicant's response) Based on her submissions, Applicant is entitled to credit for resolving her state tax debt.

### **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 (4<sup>th</sup> 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 consumer debts, student loan accounts, and federal state tax 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." Each of these DCs apply to Applicant's situation.

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 accumulation of delinquent consumer, student loan, federal and state tax debts over a period of years raise security concerns over the stability of her finances.

Since 2019, Applicant has made some demonstrable progress in addressing and resolving her account delinquencies with a documented Chapter 7 bankruptcy discharge (sans any creditor schedules) and payoffs and payment initiatives to resolve her student loan and federal and state tax debts. Her undertaken initiatives enable her to take partial advantage of three mitigating conditions (MCs). MC ¶¶ 20(a) "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment"; 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 medial emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances”; and 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” partially apply to Applicant’s situation.

Applicant, however, has a considerable amount of work to cover in addressing and documenting the resolution of her delinquent debts and accounts before she can be credited with stabilizing her finances sufficient to meet the eligibility requirements for holding a security clearance. This administrative record is lacking in schedules of the consumer debts she claims were discharged in her Chapter 7 bankruptcy proceeding. Documentation is lacking as well of balances remaining on her 2015 and 2017-2018 federal and state tax deficiencies.

And while Applicant has evidenced her making voluntary \$5.00 monthly payments to the DoE on her reported delinquent student loans, she has not provided any documentation of her having a rehabilitation agreement in place with the student loan creditor, or how long she must continue making her modest \$5.00 monthly payments before she is eligible for rehabilitation and the opportunity to return her delinquent student loans to current status. Clarification from Applicant of her rehabilitation status is needed before she can be credited with material progress in the addressing of her delinquent student loans.

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 such debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant’s case, she is to be credited with some cognizable progress in addressing and resolving her listed debt delinquencies. It is still too soon, however to be able to make safe predictions about her ability to stabilize her finances to the extent necessary to fully mitigate the Government’s financial concerns.

### **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. In Applicant’s case, she has provided some documented evidence of her addressing her delinquent consumer, student loan, and federal and state tax debts. Overall, Applicant’s efforts to date in addressing her finances and satisfying the requirements of good judgment, reliability, and trustworthiness in her professional and personal life are not enough at this time to enable her 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-g

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.

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Roger C. Wesley  
Administrative Judge