



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



In the matter of:)
)
-----) ISCR Case No. 20-00989
)
Applicant for Security Clearance)

Appearances

For Government: A. H, Henderson, Esq., Department Counsel
For Applicant: *Pro se*

07/06/2021

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On July 6, 2020, the Department of Defense (DoD) Consolidated 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 July 30, 2021, 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 April 28, 2021, and interposed no objections to the materials in the FORM. Within the time permitted, Applicant supplemented the record with an updated credit report. Applicant's post-FORM submission is admitted as Item 8 without objection.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts exceeding \$33,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In her response to the SOR, Applicant admitted each of the allegations with explanations. She claimed to have recently negotiated a reconsideration of her student loans. She also claimed that her debt delinquencies were attributable in part to serious medical issues associated with her medical bills that required addressing without the benefit of medical leave. Applicant further claimed that she has paid two of the listed SOR debts (SOR ¶¶ 1.d-1.e) and is working on a payment plan with the remaining debts (SOR ¶¶ 1.b-1.c).

Findings of Fact

Applicant is a 54-year-old alarm room supervisor for a defense contractor who seeks continuation of her security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in December 1988 and divorced in October 2002. (Item 2) She has four adult children (ages 24, 34, 35, and 39) from her former husband. Applicant earned her high school diploma in June 1984. She attended several colleges between August 1986 and January 2011 and earned a bachelor's degree in January 2011. (Item 2) Applicant reported no military service. (Item 2)

Since January 2000, Applicant has been employed by her current employer as an alarm room supervisor. (Item 2) Previously, she worked for another employer (July 1987-January 2000) as a dispatcher/guard. (Item 2)

Applicant's finances

Between December 2017 and 2020, Applicant accumulated five delinquent debts exceeding \$33,000. (Items 1-7) She has a considerable history of financial difficulties that led to the revocation off her security clearance in 2003 before her clearance was reinstated in 2008. (Items 2-3) Since her clearance reinstatement in 2008, she has accrued additional debts without documented efforts to resolve them to date. She attributes her more recent debts to chronic health issues. However, she did not detail or

provide any assurances as to when the medical costs associated with her medical issues would subside and afford more opportunity to make more progress in addressing her accrued debt delinquencies. (item 3)

Applicant's most recent credit report reveals the closure of the accounts covered by the SOR. (Item 8) Why these accounts were closed is unclear. Neither the credit report nor Applicant furnished documented information of the circumstances that produced the closure of these accounts, and their disposition cannot be the subject of speculation. Based on the earlier credit reports cited in the FORM, all of the listed SOR debts remain unresolved and outstanding.

Absent more documented proof from Applicant that her listed debts are being addressed with payments and payment plans, resolution of Applicant's SOR-listed accounts cannot be favorably established.

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 AG 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personal 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 or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage. 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 between 2010 and 2020. On the strength of the evidence presented, two disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations apply to Applicant’s situation: DC ¶¶ 19(a), “inability satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s admitted delinquent debts (SOR ¶¶ 1.a-1.e) require no independent proof to substantiate them. See Directive 5220.6 at E3. 1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). Her admitted debt delinquencies are fully documented and create judgment issues as well over the management of her finances. 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 to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified and sensitive information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion to classified information or to holding sensitive position, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing and resolving of debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability and good judgment in following

rules, regulations, and guidelines necessary for those seeking access to classified and sensitive 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 history of financial difficulties associated with her accumulated student loan and consumer debts raise considerable concerns over his ability to manage her finances in a responsible and reliable way.

Extenuating circumstances associated with Applicant's undetailed chronic medical issues reportedly played some contributing role in Applicant's accumulation of her delinquent accounts. Her reported medical circumstances warrant some extenuating credit. 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances," partially applies to Applicant's situation.

Because Applicant has failed to address any of her accumulated delinquent accounts with the income resources available to her, the second prong of MC 20(b), "and the individual acted responsibly," is not available to her at this time. With so little financial information to work with relative to the circumstances prompting her to fall behind with her student loan and consumer accounts covered by the SOR, no meaningful extenuation credit can be assigned to her at this time.

Afforded opportunities to provide clarification of her current financial condition and explanations of her lack of payment progress on her delinquent debts, Applicant provided no persuasive clarifications or explanations for (a) how she allowed her debts to become delinquent with her past and current income available to her and (b) why she has failed to take any documented steps to date to address her listed delinquent accounts. Account histories of Applicant's listed SOR debts are not sufficiently developed in this administrative record to permit more detailed assessments of the managing of her finances during the critical years in issue.

For lack of any documented repayment or financial counseling initiatives by Applicant, other potentially available mitigating conditions cannot be applied to her situation. Based on her failure to date to establish a meaningful track record of addressing her delinquent accounts, it is too soon to make safe predictive assessments as to whether she can restore her finances to stable levels consistent with minimum requirements for holding a security clearance.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether Applicant's failure to adequately address her delinquent debts are otherwise compatible with DoD requirements for holding a security clearance. Applicant's credited contributions to the defense industry are not enough at this time to overcome her accumulated delinquent debts and her lack of a meaningful track record for dealing with them and maintaining responsible control of her finances. More time is

needed for Applicant to regain established control of her finances, consistent with 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 that financial considerations 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-e:

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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge