



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-00367
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Department Counsel
For Applicant: *Pro se*

07/07/2021

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 April 30, 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 (undated), 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 March 23, 2021 and interposed no objections to the materials in the FORM. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated nine delinquent consumer debts exceeding \$22,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

Under Guideline E, Applicant allegedly was arrested in February 2018 for domestic assault (a class one misdemeanor) after an altercation with his spouse. Allegedly, he pled guilty to the charge in March 2018, and as a result of his plea, was required to pay court fees and to satisfactorily complete 26 hours of training on domestic violence issues.

In his response to the SOR, Applicant admitted several of the allegations (SOR ¶¶ 1.a-1.b, and 1.d) of Guideline F without explanations or clarifications. He admitted the allegations of SOR 2.a of Guideline E without explanations or clarifications

Findings of Fact

Applicant is a 38-year-old pipe fitter for a defense contractor who seeks continuation of his security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in November 2009 and separated in August 2018. (Item 2) He has three minor children from this marriage, which has not to date been dissolved. (Items 2 and 6) Applicant attended high school between September 1998 and June 1999, but reported no diploma issuance. He reported no post-high school education credits or military service. (Item 2)

Since October 2017, Applicant has been employed by his current employer. (Item 2) He reported brief unemployment between September 2017 and October 2017 and employment with non-defense employers in various jobs between March 2012 and August 2017. (Item 2)

Previously, Applicant worked for other employers in different types of jobs that did not require holding a security clearance. (Item 2) Applicant has never held a security clearance. (Item 2)

Applicant's finances

Between September 2017 and March 2019, Applicant accumulated nine delinquent consumer debts exceeding \$22,000. (Items 3-6) He attributed his delinquencies to his (a) wife's failure to meet the payment terms of their accounts and (b) his lack of notice of his delinquent accounts following his spousal separation. Applicant failed to provide documentation corroborating the circumstances surrounding his disputes with his SOR creditors covered by ¶¶ 1.c-1.i. (Items 2 and 6)

Applicant provided no documentation of any efforts on his part to address or dispute his listed delinquent accounts despite opportunities to provide evidence to support his payment claims. Absent documentation from Applicant of his addressing his listed SOR debts with payments and/or payment plans to establish some payment track record, restoration of his finances to stabilized levels cannot be established. (Items 3-5)

Applicant's domestic violence incident

In February 2018, Applicant and his spouse engaged in a verbal altercation that quickly escalated into a pushing and shoving match between the marital participants. (Item 6) Applicant attributed the altercation to anger, fueled by alcohol intoxication. He expressed remorse for his actions.

Appearing in court in March 2018, Applicant pled guilty to the charge of domestic assault. He was court-ordered to pay court fees for the cost of a supervising probation officer, satisfactorily complete 26 hours of training on domestic violence issues, and fulfill the court's requirements of its imposed two years of probation. (Item 6)

Applicant is credited with complying with the court's imposed sentencing requirements. He no longer socializes with persons who engage in criminal activity and assured that he will not engage in any recurrent conduct of the nature he was charged with in 2018. Applicant's assurances are credible and accepted.

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 AG 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 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.

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 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 2017 and 2019. Other concerns are raised in connection with Applicant’s 2018 domestic violence charge.

Financial concerns

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,” both apply.

Applicant’s admitted delinquent debts require no independent proof to substantiate them. See Directive 5220.6 at E3. 1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). His 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 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 his delinquent debt accumulations raise considerable concerns over his ability to manage his finances in a responsible and reliable way.

Extenuating circumstances appear to have played some role in Applicant’s debt accumulations following his spousal separation in 2018. With so little financial information to work with on the state of his finances since his marital separation, no meaningful extenuation credit can be assigned based on his marital separation claims alone.

Afforded opportunities to provide clarification of his financial conditions and explanations of his lack of payment progress on his delinquent debts, Applicant provided no persuasive clarifications or explanations for (a) why he allowed his

accounts to become delinquent, and (b) why he has failed to take any documented steps to address his delinquent accounts. For lack of any documented repayment or financial counseling initiatives by Applicant, other potentially available mitigating conditions cannot be applied to Applicant's situation. Based on his failure to date to establish a meaningful track record of addressing his account deficiencies, it is too soon to make safe predictive assessments as to whether Applicant can restore his finances to stable levels consistent with minimum requirements for holding a security clearance.

Personal conduct concerns

Additional security concerns are raised in connection with Applicant's alcohol-related domestic violence incident in February 2018. Based on a thorough review of the developed evidence in the record, one pertinent disqualifying condition (DCs) is applicable to the facts of Applicant's situation. DC ¶ 16(c), "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information," applies.

Applicant has since reconciled with his wife (although they remain separated) and learned to curtail his drinking and avoid intoxicated encounters with his spouse in their interactions. He has avoided any recurrent incidents, does not socialize or work with persons who are involved in criminal activity, and assured that he will never engage in any recurrent conduct of the nature that resulted in his domestic violence guilty plea in 2018. One mitigating condition (MCs) applies to Applicant's situation: MC ¶ 17(d), "the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur."

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his accrued delinquent debts and his failure to sufficiently address them heretofore are otherwise compatible with DoD requirements for holding a security clearance. While Applicant is entitled to credit for his contributions to the defense industry, his employment contributions are not enough at this time to overcome his accumulated delinquent debts and his lack of a meaningful track record for dealing with them.

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, while personal conduct concerns are mitigated, 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-i: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): FOR APPLICANT

Subparagraph 2.a: For 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