



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



In the matter of:)
)
-----) ISCR Case No. 20-02222
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*
06/16/2021

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 November 21, 2021, 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 December 10, 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 March 22, 2021, and interposed no objections to the materials in the FORM. Within the time permitted, Applicant supplemented the record with updated information about his accounts. Applicant's post-FORM submissions are admitted as Items 8-10 without objection.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated four delinquent student loan debts exceeding \$32,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In his response to the SOR, Applicant admitted most of the allegations covered in by SOR ¶¶ 1.a-1.c with explanations. Admitting only that he was not employed by his current employer until October 2019, he denied the allegations in SOR ¶ 1.d that his wages were garnished in October 2018 in the approximate amount of \$680 bi-weekly.

Findings of Fact

Applicant is a 41-year-old program manager 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 June 2000 and divorced in May 2006. (item 4) He has two children from this marriage (ages 18 and 17). Applicant remarried in May 2017 and has one child from this marriage (age 11). (item 4) He earned a bachelor's degree in February 2011 and a master's degree in June 2017 from accredited institutions of higher learning. (Items 4-5) He also holds a Class A Barbers Certification, which he obtained in 2019. (Item 4) Applicant enlisted in the U.S. Army in March 2000, and served six-plus years of active duty. He received an honorable discharge in October 2006. (Item 4)

Since October 2019, Applicant has been employed by his current employer as a program manager. (Item 4) previously, he worked for other non-defense employers, and for the past several years (i.e., between November 2018 and 2021), he has owned and operated his own hair salon/barber shop. (Item 4)

Applicant's finances

After quitting his manager's job in October 2018 to attend barber school, and ultimately to open his own hair salon/barbershop, Applicant began accruing child support arrearages for the two children of his first wife. (Items 4-7) On the issue of Applicant's court-ordered child support for the two children of his first wife, credit reports reveal that Applicant's wages were garnished bi-monthly, beginning in October 2019, to address his current and arrearage monthly child support obligations (assessed to be \$5,551 in the aggregate). (Items 4-7) Applicant's most recent credit report reflects a

current amount owed in the amount of \$4,923. (Item 7) While Applicant expects some relief from his child support obligations from a scheduled court hearing in April 2021, he has failed to provide updated documentation of any cessation of garnishment initiatives or other achieved favorable results. (Item 8)

Addressing his delinquent student loan obligation (calculated to be \$19,835) reported in his credit reports and covered by SOR ¶ 1.b, Applicant acknowledged the reported debt but disputed the amount owed. Because he believes the reported debt is the result of a miscommunication between his on-line campus lender over his claimed stipend entitlement and how it was to be applied, Applicant has continued to dispute it with the credit reporting agencies and has declined to pay it. (Items 3-4) Applicant, though, has never provided documentation to corroborate the basis of his dispute or furnish copies of any dispute correspondence he filed with the credit reporting agencies. That the debt no longer appears on his latest credit report is not sufficient to demonstrate that his student loan debt has been since been canceled or is no longer owed.

A third delinquent debt is covered by SOR ¶ 1.c. (Item 2) This debt is listed in the SOR as a charged off \$7,763 debt owed in connection with co-signing a vehicle loan for a family member. When the family member failed to timely honor her payment obligations, the lender looked to Applicant to cover the loan payments. (Item 3) Applicant, though, was unable to take over the car payments at the time and asked the family member, as the primary borrower, to expedite her due payments on the loan. (Item 3) To date, Applicant has neither corroborated his basis for his dispute of the SOR ¶ 1.c debt, nor provided any probative evidence of either his family member or himself paying off or otherwise resolving the debt. (Items 3-8) This account appears as a delinquent charge-off with a balance due of \$7,763 on his 2019 credit report, and is reported as a sold or transferred account in his 2021 credit report. (Items 6-7)

Absent documentation from Applicant of his addressing his delinquent accounts covered by SOR ¶¶ 1.a-1.d, with pay-offs and payment plans, or successfully resolving his disputes with the creditors of the debts he challenges, resolution of Applicant's disputed accounts cannot be favorably established. Worth noting, Applicant's post-FORM submission provides no probative evidence of his initiating any voluntary efforts to resolve his debts.

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 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 2017 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 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 his 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 his child support arrearage and other delinquent accounts raise considerable concerns over his ability to manage his finances in a responsible and reliable way.

Extenuating circumstances played a very minimal evidentiary role in Applicant's accumulation of delinquent accounts. Gainfully employed before quitting his job to attend barber school and pursue a career in the salon/barber field, he provided little information as to how this career decision impacted his finances in the short run while he was in training, and why he did not address his delinquent accounts in a more meaningful way after he returned to full-time professional employment in October 2019. With so little financial information to work with relative to the circumstances prompting him to fall behind with his child support obligations, student loan, and automobile financing, and later address them responsibly with the income resources available to him from his full-time employment, no meaningful extenuation credit can be assigned to him at this time.

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) how he allowed his debts to become delinquent with his past and current income available to him and (b) why he allowed his accounts to become delinquent, and (c) why he has failed to take any documented steps to address his delinquent accounts once his finances had improved. Account histories of Applicant's listed SOR debts are not sufficiently developed in this administrative record to permit more detailed assessment of his managing of his 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 Applicant's situation. Based on his failure to date to establish a meaningful track record of addressing his delinquent accounts, 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.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether Applicant's failure to adequately address his delinquent child support, student loan, and automobile financing 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 and maintaining responsible control of his finances.

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-d:

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