



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



In the matter of:)
)
-----) ISCR Case No. 20-03208
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

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 December 7, 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 December 7, 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 February 4, 2021 and interposed no objections to the materials in the FORM. Within the time permitted, Applicant supplemented the record with updated information about her student loans. Applicant's post-FORM submission is admitted as Item 6 without objection.

Summary of Pleadings

Under Guideline F, Applicant allegedly four delinquent student loan debts exceeding \$21,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In her response to the SOR, Applicant admitted all of the allegations with explanations. She claimed that she has consolidated her student loans and made payment arrangements with her student loan lender.

Findings of Fact

Applicant is a 33-year-old support center analyst 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 never married and has no children. (Item 3) She earned a high school diploma in April 2010 and reported college class attendance between August 2006 and at least May 2020. (Item 3) reportedly, she did not earn a college diploma. Applicant enlisted in the U.S. Air Force Reserve in April 2010 and completed her enlistment in February 2020. (Item 3) Since February 2020, she has served in her state's Air National Guard. (Item 3)

Since February 2020, Applicant has been employed by her current employer. (Item 3) Previously, she worked for other employers in different types of jobs. (Item 3) She has possessed a security clearance since approximately May 2010. (Item 3)

Applicant's finances

Between September 2006 and August 2007, Applicant took out four student loans with the student loan creditor holding student loan accounts covered by SOR ¶¶ 1.a-1.d. (Item 5) These four loans are comprised of SOR ¶ 1.a (\$9,034); 1.b (\$5,164); 1.c (\$4,306); and 1.d (\$3,442). Unable to afford her monthly payments any longer after experiencing unspecified periods of intermittent under employment between 2009 and 2018, she let her accounts become delinquent. (Items 3-4) While she managed to stay in touch with her student loan creditor over the years in pursuit of lower payments or deferral of the accounts, she could provide no dates or details of arrangements reached with the creditor. Claiming she had made three sporadic payments on her student loan accounts over the years, she could not provide any details of the dates and amounts of her claimed payments. (Item 4) Credit reports document that Applicant' student loans

were last reported to be delinquent in November 2017 and were thereafter transferred to SOR creditor 1.a-1.d for collection the same month and year.

While Applicant claims to have consolidated her student loans (totaling \$23,403) in January 2021 with her loan creditor's servicing agent, she provided no documentation of following up on her approved loan consolidation with monthly payments on the consolidated loan balance. (Item 6).

Absent documentation from Applicant of her implementing her approved student loan consolidation with monthly payments to establish some payment track record, restoration of her student loans to current status cannot be established. Worth noting, Applicant has made no documented progress in addressing her student loan accounts since her accounts were first reported as delinquent in 2017. (Items 4-5)

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 2012 and 2018. 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 student loan debts 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 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 delinquent student loan debt

accumulations raise considerable concerns over her ability to manage her finances in a responsible and reliable way.

Extenuating circumstances appear to have played some role in Applicant's student loan debt accumulations. But her reported lack of full-time gainful employment between 2012 and 2020 does not adequately explain her failure to address her student loan debts with even minimal payments during these cited periods of reduced income. With so little financial information to work with on the state of her finances during this extended period of income reduction, no meaningful extenuation credit can be assigned based on her claims of limited income.

Afforded opportunities to provide clarification of her financial conditions and explanations of her lack of payment progress on her student loans, Applicant provided no persuasive clarifications or explanations for (a) why she allowed her student loan accounts to become delinquent; (b) why she has failed to take any documented steps to address her delinquent student loan accounts; and (c) what payments she has made to date in meeting the terms and conditions of her approved consolidated loan arrangement. 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 her failure to date to establish a meaningful track record of addressing her student loan deficiencies, it is too soon to make safe predictive assessments as to whether Applicant 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 her accrued delinquent student loan debts and her failure to sufficiently address them heretofore are otherwise compatible with DoD requirements for holding a security clearance. While Applicant is entitled to credit for her contributions to the defense industry, her employment contributions are not enough at this time to overcome her accumulated delinquent student loan debts and her 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 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