



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-01400
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

10/28/2021

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 September 28, 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 requested a hearing. This case was assigned to me on July 6, 2021. A hearing was scheduled for July 30, 2021, and heard on the date as scheduled through the Defense Collaborative System (DCS). At the hearing, the Government's case consisted of six exhibits (GEs 1-5). Applicant relied on no exhibits and one witness (herself). The transcript (Tr.) was received on August 11, 2021.

Procedural Issues

Before the close of the hearing Applicant requested the record be kept open to permit her the opportunity to supplement the record with documentary evidence supporting her payment efforts and looking into the engagement of a financial counselor. For good cause shown, Applicant was granted 14 days to supplement the record. (Tr. 72-76) Department Counsel was afforded three days to respond. Within the time permitted, Applicant supplemented the record with five post-hearing exhibits that were admitted without objection as AEs A-E.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file a federal income tax return (characterized in the SOR as an unemployment income tax return) for tax year 2017, as required; (b) accumulated three delinquent student loans exceeding \$8,800; and (c) accumulated 11 delinquent consumer loans exceeding \$25,000. Allegedly, Applicant has neither filed her 2017 federal income tax return (unemployment income tax return) nor paid or resolved her listed delinquent student loan, medical, and consumer debts.

In her response to the SOR, Applicant admitted all of the allegations with explanations. She claimed unawareness of owing any taxes. She claimed she is paying on her student loan accounts. She claimed to have fallen behind on a number of her listed SOR-debts and has since taken care of a number of the listed accounts. SOR-debts ¶¶ 1.d and 1.h. She further claimed a lack of awareness of the debt covered by SOR ¶ 1.j. And, she claimed the vehicle covered by SOR ¶1.k got too old and troublesome to hold onto, and she let it go before purchasing another vehicle.

Findings of Fact

Applicant is a 34-year-old senior administrative assistant for a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in 2009 and has two children, one from this marriage and another from a prior relationship. (GE 1; Tr. 4) She earned a high school diploma in 2005 and an associate's degree in December 2013. (GE 1; Tr. 40) Applicant reported no military service. (GE 1)

Since October 2018, Applicant has been employed by her current employer. (GE 1) Between October 2016 and November 2018, she was employed by a non-defense contractor as a senior administrative assistant. (GE 1; Tr. 40-41) She reported unemployment for a brief six-month period in 2016. (GE 1) She has never possessed a security clearance. (GE 1)

Applicant's finances

Between 2013 and 2019, Applicant accumulated three delinquent student loan debts exceeding \$8,800 and delinquent medical and consumer debts exceeding \$25,000. (GEs 2-5) In her post-hearing submissions (AEs B-C) she supplied a payment history of small payments made toward her matured student loans. Because these small payments were not considered by her student loan lender, the Department of Education (DoE) to prevent her loans from being in default, they were placed in a DoE default category. (AE C)

After crediting two voluntary payments (of \$181 each) made in March 2019 and May 2019, respectively, and a U.S. Treasury offset from Applicant's tax refund entitlement (in the amount of \$838) made in February 2019 to Applicant's student loan arrearage, the DoE was able to move Applicant's delinquent student loan accounts over to the lender's rehabilitation category. (AE C) Further payment progress by Applicant on her student loan obligations is unclear. Since her last reported payments on her student loans in 2019, she hasn't provided any payment updates.

Besides her delinquent student loans, Applicant accumulated number of delinquent medical and consumer debts (11 in all, exceeding \$25,000). (GEs 2-6) To date, she has provided no documentation of her addressing any of these accounts with payments, payment plans, or successful disputing of any of the listed SOR debts. Afforded additional post-hearing opportunities to document her payment and resolution efforts, Applicant failed to do so. While six of the listed debts in the SOR have since been removed from her credit reports (e.g., SOR debts covered by ¶¶1.f-1.j), their removal alone does not supply the needed proof of her resolving them by good-faith, voluntary means.

Allegations that Applicant failed to file, as required, an federal income (unemployment income) tax return for tax year 2017 are successfully challenged by Applicant. The pertinent tax year for reporting her unemployment income was 2016, and not 2017, based on the unemployment information she provided in her electronic questionnaires for investigations processing (e-QIP) Applicant documented her filing her 2016 federal tax return in March 2017, as required. Applicant, in turn, was credited by the IRS with reporting her 2016 unemployment income for that year in her filed federal income tax return. (AE B) State income tax returns are not required in her state of residence. (Tr.. 69-70)

Addressing her financial resources currently available to her, Applicant earns \$52,000 annually and nets \$700 bi-weekly. (Tr. 65-66) She could not estimate her husband's annual salary (Tr. 67) She estimated to have a small monthly remainder after

paying her monthly bills. (Tr. 68) Applicant keeps track of her own bills every month but does not maintain a written budget. (Tr. 70) She has not pursued any financial counseling.

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.

The 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 2013 and 2019. 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 to 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). Her admitted debt delinquencies are fully documented and create judgment issues as well over the management of her finances. See ISCR Case No. 19-02593 at 2 (App. Bd. Oct. 18, 2021); 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, medical, and consumer debts raises considerable concerns over her ability to manage her finances in a responsible and reliable way.

Extenuating circumstances associated with brief unemployment in 2016 appear to have played some role in Applicant's debt accumulations. Mitigating condition (MCs)

¶ 20(b), “the conditions that resulted in the financial problem were likely 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 has acted responsibly under the circumstances,” partially applies to Applicant’s situation.

Because Applicant failed to address her medical and consumer debt delinquencies once she returned to full-time employment in October 2016, she is not positioned to take full advantage of the “acting responsibly” prong of MC ¶ 20(b). The voluntary payments she made to the DoE in 2019 to help change her payment status from default to rehabilitation, while helpful, were overshadowed by the more substantial involuntarily applied Treasury funds the DoE used to change her student loan default status to a rehabilitation category. With so little financial information to work with over the course of the past five years, no meaningful extenuation credits can be assigned at this time.

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 accrued debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant’s case, she has failed to take sufficiently meaningful good-faith voluntary initiatives steps to either pay off or establish credible payment plans to address her delinquent medical and consumer debts.

Debts reduced through involuntary initiatives, such as creditor garnishments, attachments, and foreclosures, generally do not meet the mitigation requirements of MC) ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” Neither the expiration of state statutes of limitation, creditor attachments, nor removal of delinquent debts from creditor reports for reasons other payment satisfaction or successful dispute can be equated with good-faith efforts to repay overdue creditors. See. e.g., ISCR Case No. 03-04779 (App. Bd. July 2005); ISCR Case No. 02-3030 at 3 (App. Bd. April 2004 (quoting ISCR case No. 99-9020 at 5-6) App. Bd. June 2001)

In Applicant’s case, her listed SOR debts that have since been removed from her credit reports provide no documented evidence that they were removed from her credit reports for payment or other valid reasons consistent with her good-faith voluntary efforts to address her debts. For lack of any meaningful voluntary repayment efforts, she cannot be credited with any of the mitigating conditions covered by Guideline F.

Afforded opportunities to provide clarification of her financial conditions and explanations of her lack of payment progress on her delinquent accounts, Applicant provided no persuasive clarifications or explanations for (a) why she allowed her medical and consumer accounts to remain delinquent after returning to full-time employment in October 2016; (b) why she has failed to take any documented follow-up initiatives to pay and resolve her delinquent medical and consumer debts; and (c) how she has been managing her student loan accounts since her accounts were placed in rehabilitation status in 2019. For lack of any recently 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 student loan, medical, and consumer debt 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. Mitigation requirements are not met.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her accrued delinquent 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 debts and her lack of a meaningful track record for dealing with them. Applicant is entitled to credit for successfully disputing the failure to file a federal unemployment income tax return covered by SOR ¶ 1.a.

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 covered by SOR ¶¶1.b-1.o are not mitigated. Applicant is credited with mitigating the allegations covered by SOR ¶ 1.a. 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.b-1.o:
Subparagraph 1.a:

Against Applicant
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