



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



In the matter of:)
)
-----) ISCR Case No. 21-00081
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2021

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant mitigated financial considerations concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On May 28, 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 May 31, 2021, 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 August 17, 2021, and interposed no objections to the materials in the FORM. Within the time permitted, Applicant supplemented the record with updated information about his student loan, his consumer account, and his consulting service. Applicant's post-FORM submissions are admitted as Items 7-10 without objection.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated two delinquent debts between 2018 and 2021, exceeding \$30,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In his response to the SOR, Applicant admitted both of the allegations covered by SOR with explanations. He claimed he ceased working due to his wife's fall at work in 2014 and his own need for six surgeries, both of which required lifestyle changes that brought about major increases in their outlays once their workman's compensation payments ceased. He claimed that many of his creditors continued to work with them, while many did not. Applicant claimed that he has been working with his student loan lender (SOR ¶1.a and enrolled in the lender's loan consolidation program. And, he claimed he paid off his SOR ¶ 1.b credit card account bank loan with funds withdrawn from a retirement account.

Findings of Fact

Applicant is a 59-year-old help desk employee of 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 November 1986 and has one child (age 20) from this marriage. (Item 3) He earned a bachelor's degree in June 1992 and a master's degree in June 2015. He reported no military service. (Item 3) Since September 2018, Applicant has been employed by his current employer. (Item 3) Previously, he worked for other employers in information technology-related jobs. (Item 3)

Applicant's finances

Applicant ceased working in 2014 due to his wife's fall at work the same year and his own need for six surgeries, both of which required lifestyle changes that brought about major increases in their outlays once their work compensation payments ceased. (Items 2 and 7) Applicant's financial situation was further stressed by his bank's continued interception of Applicant's payouts to his creditors to facilitate the bank's prioritizing of its own fees owed by Applicant and his wife. (Items 2 and 7) Once Applicant discovered how the bank was misallocating his earmarked creditor payments,

he took remedial steps to mitigate any further losses by his creditor and worked with the creditors that were receptive to his good-faith payment initiatives. (Items 2 and 7)

Between 2017 and 2021, Applicant accumulated two delinquent accounts: a student loan account in the amount of \$22,732 and a credit card account in the amount of \$7,952. (items 4-9) Both of these debts remained unresolved and outstanding until this year.

Upon receiving the SOR, Applicant contacted his personal consulting representative who handles his student loans. (Items 2 and 10) He was able to successfully enroll in his student loan lender's loan consolidation program and made his first scheduled monthly payment (for \$269) in May 2021. (Items 2 and 7) Satisfying the agreed terms of Applicant's direct student loan consolidation loan, Applicant paid off the \$22,732 loan balance in August 2021. (Items 7-8)

The only remaining delinquent debt covered in the SOR is a listed \$7,952 credit card debt owed to the SOR creditor in ¶ 1b. Applicant documented his pay off of this debt in May 2021 in the agreed reduced amount of \$3,181. (Items 7 and 9)

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 two delinquent debts between 2017 and 2021. 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 ad

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 major student loan and credit card delinquencies raise initial concerns over his ability to manage his finances in a responsible and reliable way.

Extenuating circumstances played a considerable evidentiary role in Applicant's accumulation of his two delinquent accounts. Stressed by his wife's accident and his own surgical procedures in the 2014 time-frame, he and his wife struggled to maintain their finances in stable order over the course of the ensuing seven years. 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," applies to Applicant's situation.

With the two payoffs of the listed SOR debts credited to him, Applicant may take advantage of two other mitigating conditions: MCs ¶¶ 20(c), "the individual has received counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control," and 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," are applicable as well. Based on his repayment efforts to date, Applicant is credited with successfully bringing his finances to respectable levels of stability, 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 accumulated delinquent accounts which he has since paid off in full to the satisfaction of his listed SOR creditors are compatible with DoD requirements for holding a security clearance. With his cited extenuating circumstances serving as the principal underlying sources of his financial difficulties, Applicant's recent repayment efforts provide sufficient evidence of responsible management of his finances to enable him to mitigate financial consideration concerns.

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 mitigated. Eligibility for access to classified information is granted.

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): FOR APPLICANT

Subparagraphs 1.a-1-b:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge