



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



In the matter of:)
)
-----) ISCR Case No. 19-03686
)
Applicant for Security Clearance)

Appearances

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

12/23/2021

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate financial considerations and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On February 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 and personal conduct guidelines 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 January 18, 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 April 14, 2021, and interposed no objections to the materials in the FORM. Within the time permitted, Applicant timely supplemented the record with a May 2020 credit report which was admitted without objection as Item 11 for consideration. (Item 11)

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file his federal and state income tax returns for tax year 2017 as required; (b) accumulated 18 delinquent student loan accounts exceeding \$185,000; (c) accumulated five delinquent consumer debts exceeding \$14,000, and (d) accrued three delinquent medical debts approximating \$552. Allegedly, the listed tax-filing lapses and delinquent debts listed in the SOR remain unresolved and outstanding.

Under Guideline E, Applicant allegedly (a) incurred traffic-related convictions in July 2017 and November 2018, respectively, for driving on a suspended license and (b) had his driver's license suspended in March 2019 with a driving record that reflected 13 demerit points from his state's department of motor vehicles (DMV).

In his response to the SOR, Applicant admitted each of the allegations covered in Guidelines F and E with explanations. He claimed he erroneously believed he had filed his 2017 federal and state income tax returns with his 2018 tax returns and expressed his intention to file his 2017 returns by June 2020.

Applicant also claimed in his response that most of his student loan debts had been charged off on his credit reports or remain in delinquent status. He further claimed that he was considering repayment options for addressing his delinquent student loan debts. He is remaining student loan debts (covered by SOR ¶¶ 1.c-1.k, 1.m-1.o, 1.q, and 1.s-1.w), and is evaluating his payment options. And, he claimed that his remaining medical (SOR ¶¶ 1.r, 1.x, and 1.z) and consumer (SOR ¶¶ 1.p, 1.y, and 1.aa) debts have since been paid and are no longer valid debts.

Addressing the personal conduct allegations, Applicant affirmed that he is currently living in another state and is uncertain what steps he will take to regain his state license in the state he has abandoned should he decide to regain his residency in the state. All he would assure is that make sure his driving privileges have been restored.

Findings of Fact

Applicant is a 34-year-old software test engineer 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 has never been married and has no children. (Item 4) He earned a high school diploma in June 2005. Between August 2006 and December 2012, he attended college classes and reported earning a bachelor's degree. (Item 4) Applicant reported no military service.

Since August 2018, Applicant has been employed by his current employer as a software test engineer. He reported brief periods of unemployment in 2014 and 2018 and worked for various defense and non-defense contractors in the software engineering field between 2010 and 2018. (Item 4)

Applicant's finances

Applicant failed to timely file his federal and state income tax returns for tax year 2017. (Items 2-3) He attributed his filing failures to being unaware of his filing lapses until he received the SOR. (Item 2) He assured that he is working to rectify his federal and state tax filing lapses by filing both sets of returns by June 2020. (Item 2) Records confirm his failure to file his 2017 federal and state tax returns as required. Applicant provided no documentary information that he has filed his 2017 federal and state tax returns as he committed to doing at the close of the record.

Between 2006 and 2019 Applicant accumulated a number of delinquent student loan debts. Altogether, he accrued 18 delinquent student loans (covered by SOR ¶¶ 1.c-1.k, 1.m -1.o, and 1.q-1.w), exceeding the sum of \$185,000. With the payment options, he verbally received from the DoE, Applicant is considering his options of either pursuing loan rehabilitation steps with the DoE or exploring a repayment option with a private lender. (item 2)

To date, Applicant has provided no updates on his plans for resolving his student loan delinquencies. While most of these delinquent student loan accounts have either been charged off or referred to collection (Items 5-7 and 11), they have not been voluntarily addressed by Applicant and remain unresolved and outstanding accounts.

Besides his delinquent student loan accounts, Applicant accumulated a number of delinquent medical and consumer accounts. Credit reports document three delinquent medical accounts (SOR ¶¶ 1.r 1.x, and 1.z), totaling \$552. (Items 5-7) Reported delinquent consumer debts (SOR ¶¶ 1.i, 1.p, 1.y, and 1.aa) exceeding \$14,000. (Items 5-7)

Like Applicant's delinquent student loan debts, his delinquent medical and consumer debts have either been charged off or placed in collection status. (Items 5-7 and 11) However, these delinquent accounts have not been resolved by Applicant to date with payments and payment plans and remain unresolved and outstanding.

The largest consumer debt covered by the SOR is a reported delinquent balance on a car repossession that is referenced by SOR ¶1.1 for \$10,932. (Items 5-7) Once sued by the creditor who repossessed his vehicle in May 2019, Applicant entered into a written settlement agreement to begin repaying the debt. (Item 7) Once Applicant defaulted on this agreement, the creditor filed an affidavit of non-compliance. (Item 7) Based on the creditor's affidavit of non-compliance, the court entered judgment against Applicant in June 2019 in the amount of \$10,932. (Item 8) Applicant has provided no documented proof of his satisfying the judgment's terms.

Absent documentation from Applicant of his addressing his 2017 tax filing lapses and delinquent student loan, medical, and consumer debts with pay-offs and payment plans, or providing documentation of his successfully resolving his disputes with the creditors of the debts he challenges by other means, resolution of Applicant's tax filing lapses and listed delinquent accounts cannot be favorably established. Worth noting, Applicant's post-FORM credit report submission provides no probative evidence of his initiating any voluntary efforts to resolve his debts.

Applicant's traffic-related offenses

Records document that between 2017 and 2018, Applicant was charged with driving on a suspended license. (item 8) In March 2019, Applicant's driver's license was suspended and his driving record was noted to reflect 13 demerit points from his state department of motor vehicles (DMV). (Items 9-10) Applicant admitted the allegations and provided a May 2020 letter from his state's DMV explaining how he was ineligible to drive in his state of residence until he satisfied imposed licensing conditions: completion of a driver improvement course, attendance of an intervention interview, and payment of a \$185 reinstatement fee. (Item 2)

In his SOR response, Applicant expressed uncertainty over what steps he would take to regain his state driver's license in his previous state of residence. He committed only to taking required steps to regain his driving privileges in the event he moved back to his previous state of residence. (Item 2)

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.

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 or sensitive 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 failure to timely file his federal and state income tax returns for tax year 2017. Additional financial concerns are raised over Applicant's accumulation of delinquent student loan, medical, and consumer debts between 2013 and 2021. (Items 5-7) Personal conduct concerns are raised as well over Applicant's 2017 convictions for driving on a suspended license.

Financial concerns

Addressing financial concerns, three disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations apply to Applicant's situation: DC ¶¶ 19(a), "inability satisfy debts," 19(c), "a history of not meeting financial obligations," and 19(f) "failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required," apply.

Applicant's admitted tax filing failures and 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 tax filing failures and debt delinquencies are fully documented and create judgement 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 tax-filing lapses and accumulation of delinquent student loan, medical, and consumer debts raise considerable concerns over his ability to manage his finances in a responsible and reliable way. These concerns require considerable documentary support from Applicant to extenuate and mitigate them.

Extenuating circumstances played a very minimal evidentiary role in Applicant's accumulation of delinquent accounts. Gainfully employed since August 2018, he provided little information as to why or how he has been unable to file his 2017 federal and state tax returns and address his debts with payments and payment plans. With so little financial information to work with relative to the circumstances prompting him to fail

to file his 2017 federal and state tax returns and fall behind with his student loan and other debts, no meaningful extenuation credit can be assigned to him at this time.

Afforded opportunities to provide explanations and clarification of his financial condition and explanations of his lack of addressing his delinquent debts, Applicant provided no persuasive clarifications or explanations for (a) how he has since failed to file his 2017 tax returns; (b) how he allowed his debts to become delinquent; and (c) why he has failed to take any documented steps to file his 2017 tax returns and address his delinquent accounts since taking his current job in 2018.

Due to his 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.

Personal conduct concerns

The Government's personal conduct concerns are raised over Applicant's serious breaches of highway rules and regulations. Applicant's 2017 and 2018 traffic offenses, while misdemeanors, represent major lapses in judgment by Applicant. The combined traffic-related offenses and ensuing driving suspension (reflecting 13 demerit points) share a common thread of security concerns over questionable exercises in judgment. These collective errors in judgment, when stitched together contextually, reflect an overall pattern of poor judgment, unreliability, and untrustworthiness under the personal conduct guideline.

Based on the evidence produced on this written record, one of the DCs covered by the personal conduct guideline is applicable to the developed facts in evidence. DC ¶ 16(d), "credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports an overall 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. This includes, but is not limited to, consideration of . . . (3) a pattern of dishonesty or rule violations. . . .," applies to Applicant's situation.

Applicant's 2017-2018 traffic-related incidents reflect multiple lapses of judgment and maturity. When considered together in this context, the two SOR-covered incidents support a troubling pattern of questionable judgment, untrustworthiness, and unreliability, properly alleged and pursued under Guideline E.

In the past, the Appeal Board has addressed traffic-related offenses stitched together to raise security concerns over an applicant's overall judgment, trustworthiness, and reliability. In ISCR Case No. 03-08475 at 5-8 (App. Bd. Sept. 14,

2007), the applicant accumulated seven traffic-related offenses and one DUI offense. Similar to the two of offenses cited in this case, the traffic-related offenses considered in ISCR Case No. 03-08475 included offenses of driving with a suspended license. Like the traffic-related instances cited in ISCR Case No. 03-08475, Applicant's two traffic-related offenses could be expected to fall into minor categories if assessed individually. Considered together with his lack of demonstrated financial responsibility associated with his tax-filing lapses and delinquent account accruals, his traffic offenses become part of a concerning pattern of judgment neglect.

Other Appeal Board cases cited by the Government involving multiple traffic-related offenses also sustained clearance denials for reasons of demonstrated lack of overall judgment sufficient to raise security concerns over applicant's cited inability to follow rules and regulations over a prolonged period of years. See ISCR Case No. 11-14899 at 1-3 (App. Bd. April 15, 2015; ISCR Case No. 10-0928 at 4 (App. Bd. March 5, 2012)

While time is on Applicant's side with his location to another state, he has not demonstrated the level of maturity and judgment required for safe driving on the nation's roads and highways to ensure he will be able to exercise sound judgment when asked to safeguard classified and sensitive information entrusted to him. Potentially applicable mitigating conditions, accordingly, are not available to Applicant at this time.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of tax filing lapses of judgment, accumulation of delinquent debts, and involvement in serious breaches of highway safety, when taken together contextually, reflect trust, reliability, and judgment concerns incompatible with the fiduciary duties associated with holding a security clearance. Further assessment of Applicant's overall qualifications for holding a security clearance is needed to make safe predictive judgments about Applicant's clearance worthiness,

Evaluation of Applicant's clearance eligibility in this case requires consideration of whether Applicant's failure to adequately address his tax filing lapses, account delinquencies, and safe driving responsibilities, when accessing his state's roads and highways, 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 tax filing breaches and debt delinquencies, and driving repeatedly on a suspended driver's license in his former state of residence.

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 and personal conduct 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-aa: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.c: 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