



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



In the matter of:)
)
-----) ISCR Case No. 19-02533
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*
03/31/2021

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On November 26, 2019, 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 April 6, 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 December 2, 2020 and interposed no objections to the materials in the FORM. She did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 44 delinquent consumer debts exceeding \$35,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

Under Guideline H, Applicant allegedly (a) used marijuana with varying frequency from approximately 1980 to approximately 2015 and (b) used marijuana with varying frequency while holding a security clearance from approximately 2010 until approximately 2015. Allegedly, Applicant's marijuana use involved the illegal use of controlled substances and raises questions about her reliability and trustworthiness.

In her response to the SOR, Applicant admitted all of the allegations without explanation. Her answers, as such, reflect unqualified admissions that require no probative evidence of the facts alleged.

Findings of Fact

Applicant is a 55-year-old production control planner 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 married in August 2003 and has one adult child from this marriage. (Item 3) She earned a high school diploma in 1983 and reported no higher education credits or military service. (Item 3)

Since August 1989, Applicant has been employed by her current employer. (Item 3) She has possessed a security clearance since approximately 1996. (Item 3)

Applicant's finances

Between February 2012 and October 2018, Applicant accumulated 44 delinquent consumer-related debts exceeding \$35,000 in the aggregate. (Items 4-7) Despite being fully employed, she has not addressed any of her listed delinquent accounts. (Items 4-7) When asked about her financial problems in her interview with an investigator from the Office of Personnel Management (OPM) in August 2018, she attributed her payment lapses to being "young and stupid." (Item 4) She further explained to the OPM investigator that she did not have enough money to pay of her debts and "had lost track of all of the different accounts she had." (Item 4)

To address her debt delinquencies, Applicant contacted a debt consolidation service. (Item 4) She could provide no contact information, however, for the service

provider or its successor. Nor did she furnish any documentation of her counseling initiatives with this service. She claimed she set up a payment plan with the original debt consolidation service that called for monthly payments of \$400, subject to additional fees for delinquent accounts. (Item 4) Offered an opportunity by the OPM investigator to provide additional information about her delinquent accounts and her payment progress with the debt consolidation service and its successor, Applicant failed to do so.

Applicant's drug activities

Applicant used marijuana with varying frequency (roughly twice a year) from approximately 1980 to approximately 2015. (Item 4) Between approximately 2010 and approximately 2015, she used marijuana with varying frequency while holding a security clearance. (Item 4) She estimated to have used marijuana between 2010 and 2015 approximately 10 times, mostly at parties, concerts, and with others in social gatherings. She has received no counseling or treatment for drug abuse.

Since 2015, Applicant has not used marijuana. Nor has she socialized or associated with persons that use marijuana or any other illegal drugs since 2015. (Item 4) Applicant assured she will not use marijuana or any other illegal drugs in the future because she does not want to "jeopardize her career." (Item 4)

The administrative record does not include any documentation to challenge Applicant's post-2015 drug-free assurances. Considering all of the circumstances surrounding Applicant's past history of marijuana use, her assurances that she has remained drug-free since her last use in 2015 are accepted.

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.

Drug Involvement

The Concern: Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability and willingness to comply with laws, rules, and regulations. AG ¶ 24.

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.” Additional security concerns are raised over Applicant’s use of marijuana, both before and after she acquired a security clearance.

Financial concerns

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

Extenuating circumstances do not appear to have played any cognizable role in Applicant’s delinquent debt accumulations. She reported consistent employment with the same employer since 1989. She provided no persuasive explanations, however, as to (a) why she allowed her accounts to become delinquent; (b) why she has failed to take any documented steps to address her delinquent accounts; and (c) what plans she has to address them.

Drug-use concerns

Security concerns are raised as well over Applicant’s possession and use of marijuana and her continued use of marijuana after being granted a security clearance in 2010. On the strength of the evidence presented, three disqualifying conditions of the Adjudicative Guidelines (DCs) for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; 25(c); “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”; and 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position.”

Applicant admitted to using marijuana with varying frequency (regularly but mostly infrequently) over a 35-year period before abandoning her use of marijuana

altogether in 2015. Between approximately 2010 and approximately 2015, she used marijuana with the same varying frequency while holding a security clearance. (Item 4) She estimated to have used marijuana between 2010 and 2015 approximately 10 times, mostly at parties, concerts, and with others in social gatherings, and has received no counseling or treatment for drug abuse before or since her last use in 2015.

Based on a review of the administrative record in this case, several mitigating conditions under the drug involvement guideline are available to Applicant. DC ¶¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment”; and 26(b), “the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) dissociation from drug-using associates and contacts and (2) changing or avoiding the environment where drugs are used,” apply to Applicant’s situation.

Overall, Applicant’s use of marijuana, while of a lengthy duration extending over a 35-year period, was generally infrequent and mostly practiced in social situations at parties, concerts, and with others in social gatherings. She has since given up all use of marijuana and no longer attends or participates in parties and social gatherings where marijuana is used. With over five years of observed abstinence from illegal drug use, safe predictions can be made at this time that she will not return to marijuana use in the foreseeable future

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether her accrued delinquent debts and her failure to 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 efforts are not enough at this time to overcome her accumulated delinquent debts and her lack of a good track record for dealing with them. Because her use of marijuana (including her continued use while holding a security clearance) is aged (over five years) and unlikely to recur, drug involvement concerns are mitigated by the passage of time.

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 while drug involvement concerns are mitigated, financial consideration 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-rr: Against Applicant

GUIDELINE H (DRUG INVOLVEMENT): FOR APPLICANT

Subparagraphs 2.a-2.b: 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