



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



In the matter of:)
-----) ISCR Case No. 20-02683
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2022

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 September 7, 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 September 14, 2021, 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 November 16, 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 Items 6-8 without objection.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated (a) six delinquent student loan debts exceeding \$54,000 and (b) two consumer debts (inclusive of a judgment) exceeding \$11,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In her response to the SOR, Applicant denied having any delinquent student loans. She claimed she could neither admit nor deny the allegations in SOR ¶¶ 1.g and 1.h.

Findings of Fact

Applicant is a 45-year-old civilian employee of 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 2001. She has two children and one step-child from this marriage. (GE 3) She earned an associate's degree in March 2011 and a bachelor's degree in August 2012 from the same university. (GE 3) Applicant reported no military service.

Since June 2016, Applicant has been employed by her current contractor as a senior acquisition associate. (GE 3) Between January 2008 and May 2015, she worked for other defense contractors in various positions. She has held a security clearance since approximately October 1998. (Item 3)

Applicant's finances

Between August 2010 and January 2012, Applicant took out six student loans with the lender holding student loan accounts covered by SOR ¶¶ 1.a-1.f. (Items 4-5) These student loans are comprised of SOR ¶¶ 1.a (\$10,860); 1.b (\$12,126); 1.c (\$6,104); 1.d (\$11,556); 1.e (\$6,949); and 1.f (\$7,458). Credit reports document that Applicant's student loans have been delinquent intermittently between 2018 and 2020, and were assigned to the U.S. Department of Education (DoE).

Following the assignment of Applicant's loans to the DoE, the accounts were consolidated and brought current in October 2020. (GEs 4-5) Since October 2020,

Applicant's consolidated student loans have been in forbearance with reported zero balances. (Items 2 and 6-7) Each of her deferred student loans is scheduled to be returned to regular payment status in January 2022. (Item 7) In anticipation of her loans being returned to regular payment status, Applicant initiated making regular monthly payments between November 2020 and May 2021, and is credited with total payments for this period of \$4,800. (Item 7)

Besides her student loans, Applicant incurred two other delinquent debts between August 2017 and December 2019. One of the debts involved a default judgment entered against herself and her husband in March 2020 (covered by SOR ¶ 1.g). This entered judgment reportedly arose from her husband's car accident and his failure to resolve the financing charges still owing on the vehicle in reported amount of \$10,638. (Item 6) Applicant documented her removal as a responsible party on the entered judgment. (Item 8) She provided no additional information covering her SOR ¶ 1.h delinquent \$864 debt on a credit card account opened in 2014. It is a reported old credit card debt for claimed attorneys fees that Applicant apparently disputes. While the debt quite possibly has been charged off by the creditor, it remains listed in Applicant's credit report as a delinquent debt.

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 AGs 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 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 reported delinquent student loan debts and two other delinquent debts (with one a reported outstanding judgment against her and her husband arising from her husband’s car accident). 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.”

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 a 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 reported history of financial difficulties associated with her delinquent student loans and two delinquent consumer debt accruals raise initial concerns over her ability to manage her finances in a responsible and reliable way. Applicant addresses those concerns in her post-FORM submissions.

Afforded opportunities to provide clarification of the debts reported to be delinquent in her credit reports and court records, Applicant provided convincing documentation that her reported delinquent loans were consolidated and placed in forbearance in 2020 with credited current balances. Further documentation furnished by Applicant credited her with resolving the 2020 default judgment debt charged to her in court records. At this point, only the SOR ¶ 1.h debt remains unresolved

Applicable mitigating conditions (MCs) are: ¶¶ MC 19(a), "the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness"; and MC 19)(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." Based on the pertinent documentation furnished by Applicant, safe predictive assessments can be made that Applicant can maintain her finances at 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 and other debts and her failure to sufficiently address them heretofore are otherwise compatible with DoD requirements for holding a security clearance. Factors to be considered are covered by ¶ 2(d) of the Directive.

Based on the evidence produced in the record, Applicant merits credit for both her contributions to the defense industry and her resolving her student loan and judgment debts. Leaving only one small debt unresolved, Applicant has demonstrated sufficient control of her finances to warrant favorable conclusions of her meeting minimum requirements for holding a security clearance.

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-h:

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