



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



In the matter of:)
-----) ISCR Case No. 20-03156
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2022

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On December 7, 2020 the Department of Defense (DoD) Consolidated Central 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); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (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 February 16, 2021, and requested a hearing. This case was assigned to me on October 26, 2021. A hearing was scheduled for

January 6, 2022, and was heard on the scheduled date. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on nine exhibits (AEs A-F) and one witness (himself). The transcript (Tr.) was received by DOHA on January 28, 2022.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with updated payment, budgeting, and credit repair information. For good cause shown, Applicant was granted 14 calendar days to supplement the record. Department Counsel was afforded seven days to respond.

Within the time permitted, Applicant supplemented the record with documented information about his progress in addressing his delinquent debts. Applicant's post-hearing submissions were admitted, without objection, for consideration as AEs H-N

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 11 delinquent consumer and medical debts exceeding \$46,000. Allegedly, these debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted several of the allegations with explanations and clarifications. For these admitted allegations, he claimed he had loan insurance to cover the debts incurred preceding his military separation. He claimed he has been working to resolve these debts since 2016, albeit to no avail. He further claimed he has enlisted the help of a law firm to resolve the listed SOR debts alleged to be delinquent and is still in the process of resolving these debts that have increased in amount since their origination in 2015.

For those debts he denied, Applicant claimed these debts are being challenged by the law firm he retained to investigate the validity of the SOR-listed debts. He also claimed to have briefed his security manager and her predecessor on the financial issues he is working on. He claimed, too, to have created a budget to track his spending areas that he can cut back on, engaged credit monitoring firms, and has taken steps to review his credit reports more often to keep better track of his timely paying of his bills. Applicant also pledged to enlist the help of reputable credit counseling firms to provide further credit counseling.

Findings of Fact

Applicant is a 40-year-old civilian employee of a defense contractor who seeks a security clearance. Applicant denied generally each of the allegations in the SOR with explanations covering the financial allegations that included admissions. Findings of fact follow.

Background

Applicant married in October 2009 and has one child (a son, age 17). (GE 1; Tr. 59) He attended college classes between August 2017 and January 2020, but did not earn a diploma. (GE 1) More recently, he completed six on-line credits for his enrolled business courses. (AE H; Tr. 56) Applicant enlisted in the Air Force in September 2001 and served 15 years of active duty. He received an honorable discharge in January 2016. (GE 1; Tr. 56)

Since January 2016, Applicant has been employed by his current employer (who has undergone several name changes since then) as a scheduler. (GE 1 and AE J; Tr. 62-64) Previously, he worked for other employers in various jobs while he was still on active military duty. (GEs 1-2) He held a security clearance while he was in the Air Force and is currently sponsored by his employer for a security clearance. (GE 1; Tr. 63)

Applicant's finances

Following his active-duty discharge from the Air Force in January 2016, Applicant struggled to keep up with his financial responsibilities due to the reduced income he was earning from his post-military job and his loss of housing, insurance, and food expense coverage. (GE 2) Credit records document that he accumulated in excess of \$46,000 in consumer debts, in addition to accruing two medical debts exceeding \$500 before his military separation in January 2016. (GEs 2-4) At the time of his military discharge, Applicant estimates he was making around \$50,000 a year, in addition to his receipt of valuable housing and other living expenses.

Citing a pre-military discharge insurance policy to cover many of his pre-discharge debts while he sought post-discharge employment, Applicant could not obtain a copy of his insurance policy from the identified carrier, who is no longer in business. (AEs B-C; Tr. 43-45). Nor was he able to provide information on the specific lines of loans and debts the insurance was designed to cover. (Tr. 58)

Following the hearing, Applicant was able to locate a copy of a letter covering his 2016 application for debtor's insurance to meet his payment obligations to SOR creditor ¶ 1.b. (AE M) Without a copy of the policy itself, however, terms and conditions of the policy cannot be identified and validated. Because this insurance carrier never reportedly covered any of Applicant's pre-discharge debts before going out of business (AE M), inferences can be drawn of policy payment restrictions and limitations on payouts to any of Applicant's pre-discharge creditors. Before his military discharge, Applicant obtained other insurance policies as well to cover other debts that might emerge following his anticipated military separation. See GE 2; Tr. 58)

To help him repair his credit and establish a budget for addressing his existing and future debts, Applicant retained a credit-repair firm in January 2022. (AE B) Terms of his agreement with the credit-repair firm called for the credit repair firm to analyze Applicant's debts and assist him in his ensuring that his credit reports fairly and

accurately reflected his credit history. (AE C) The credit repair firm's responsibilities included helping Applicant with repayment plans and consolidating his debts where warranted. (AE C) Applicant's repair credit agreement limits the repair firm's responsibilities to fulfilling its best efforts and includes no assumed responsibility to ensure any specific outcomes. (AEs E-F and I; Tr. 34-36, 44-46)

SOR creditors affected by Applicant's repair firm's efforts are comprised of the following: SOR ¶¶ 1.a (\$136), 1.b (\$6,727), 1.c (\$594), 1.d (\$2,558), 1.e (\$19,078), 1.f (\$9,640), 1.g (\$2,495), 1.h (\$809), 1.i (\$2,309), 1.j (\$1,388), 1.k (\$954), 1.l (\$873), and 1.m (\$412). (AEs D-F; Tr. 30-34) Debts that have since been paid and resolved are as follows: SOR ¶¶ 1.a (\$136); 1.d (\$2,558), and 1.e (\$19,078). (AEs G and K-M; Tr. 30-34) Together, these credited debt payments exceed \$21,000 in the aggregate and are favorably resolved.

Challenged debts that Applicant does not consider to belong to him Include: SOR creditors ¶¶ 1.b (\$6,727), 1.f (\$9,640), 1.g (\$2,495), 1.h (\$809), 1.i (\$2,309), 1.j (\$1,388), 1.k (\$954), 1.l (\$873), and 1.m (\$412). (Tr. 49-58) Together, these challenged debts exceed \$25,000. Documenting the creditor SOR ¶ 1.f firm's being cited by the Federal Deposit Insurance corporation (FDIC) for faulty business practices involving debt consolidation coverage in May 2017, Applicant stressed that he paid an additional \$1,163 for debt cancellation insurance in 2015. (AE N) Terms of his insurance contract included coverage for debts incurred prior to his military discharge. (AE N) Reportedly, his SOR ¶ 1.f creditor never honored its insurance contract with Applicant and later charged off the full amount of the remaining \$9,640 debt (inclusive of accrued interest)

Based on the FDIC's ordered restitution of debts owed aggrieved customers of SOR ¶ 1.f, the creditor's ensuing charge-off of Applicant's debt is inferred to be consistent with the creditor's compliance with the FDIC's ordered restitution, and the charge-off does not appear to be based on the simple passage of time. (SOR ¶ 1.f). (AE N; Tr. 56-58) Favorable resolution of the debt covered by SOR ¶ 1.f is warranted.

Applicant's disputes of the remaining debts covered by the SOR are based on his claims that they were covered by his insurance policy, and should have been paid. Even if his claims are based on faulty understandings of the breadth and scope of his insurance policy's coverage, his stated impressions appear to be the result of good-faith mistaken understandings of his insurance policy's terms and conditions, and were not motivated in any way by attempts to evade payment responsibility. (AE N; Tr. 56)

Applicant currently earns \$80,000 annually, a figure that has not appreciably changed since his start date in 2016. (Tr. 67) Once his disputed debts are resolved (either favorably or unfavorably), he will work with a debt management group to pay off his remaining validated debts. (Tr. 62-65) He continues to claim that debts covered by his debtors' insurance policy should have been paid by the administering insurance carrier. (Tr. 66)

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 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 or inability 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 or 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 personnel 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 acts or otherwise questionable acts to generate funds. . . . 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 consumer and medical debts prior to his military separation in 2016. While most of his SOR-listed debts covered by the SOR have been charged off or otherwise removed from his credit reports, they raise trust, reliability, and judgment concerns about her current and future ability to manage her finances safely and responsibly.

Financial concerns

Applicant’s accumulation of delinquent debts (comprised of consumer and medical debts) warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations.” Each of these DCs apply to Applicant’s situation.

The several debts Applicant admitted with explanations 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 debts are fully documented and create judgment issues as well over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004). Although he qualified his admissions with explanations, his admissions can be weighed along with other evidence developed during the hearing.

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder’s demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts. Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules 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 cited financial difficulties associated with his reliance on debt insurance policies arranged before his military separation in 2016 to cover post-discharge unemployment issues warrant some application of mitigating condition 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.” While Applicant is able to fulfill the first prong of MC ¶ 20(b) with his cited post-discharge financial struggles his failure to take a more active role in addressing his delinquent debts with payments and payment plans precludes full

application of the second prong satisfy the second prong (“acted responsibly under the circumstances”) of MC 20(b) is conjunctive in its application and is the key prong that prevents him from gaining any more than partial application of MC 20(b).

Several of the allegations covered by the SOR are disputed by Applicant for unsubstantiated reasons, notably SOR ¶¶ 1.b (\$6,727), 1.g (\$2,495), 1.h (\$809), 1.i (\$2,309), 1.j (\$1,388), 1.k (\$954), 1.l (\$873), and 1.m (\$412). None of these raised disputes are supported by adequate contemporaneous documentation covering the factual and legal bases of his disputes with these creditors.

To apply MC ¶ 20(e), “the individual has a reasonable basis to dispute the legitimacy of the past-due debts which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue,” it was incumbent upon Applicant to supply documented evidence of the nature of the dispute, the substantive basis of his claims and efforts on her part to resolve the dispute with the creditor before declining any further payments. Without such evidence, MC ¶ 20(e) has only limited application to the facts of Applicant’s case. Still, Applicant has shown considerable reliance on the credit repair firm he retained in January 2022, and with their assistance in identifying and validating debts listed in the SOR, he has been able to make a good deal of progress in addressing his individual debts and resolve them favorably. For these efforts, he is entitled to considerable overall credit in addressing and resolving his delinquent accounts.

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, he has demonstrated considerable personal responsibility in addressing his debts and overcoming his misplaced reliance on the debtor’s insurance policy he arranged prior to his military separation in 2016.

Applicant’s concerted payment initiatives this past year enable him to take advantage of the mitigating benefits of MC ¶ 20(d), “the individual initiated and is adhering to a good-faith to repay overdue creditors or otherwise resolve debts.” His efforts to date enable him to satisfy the Appeal Board’s imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020) Although, potentially applicable statutes of limitation and debts removed from credit reports for reasons other than payment or resolution by other voluntary means (to include meritorious disputes of debts) may not be equated with good-faith voluntary efforts to repay overdue creditors. Applicant’s overall efforts in addressing his delinquent debts enable him to overcome the statutory bars applicable to any of the debts that have fallen off his credit reports for reasons other than payment and reliance on meritorious disputes. 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).

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a security clearance. Not only is Applicant entitled to credit for his military service and work in the defense industry, his overall repayment efforts are enough to overcome his past failures or inability to resolve his accumulated consumer and medical debt delinquencies. Overall trustworthiness, reliability, and good judgment is established by the weight of the evidence.

Applicant has documented his favorable resolution of SOR-listed debts representing over 70 per cent of the overall debt total covered in the SOR. Based on a consideration of all of the facts and circumstances considered in this case, safe predictions can be made that Applicant has stabilized his finances with his payment and dispute initiatives and can be trusted to undertake reasoned, good-faith efforts to maintain responsible control of his finances in the future. With his combined repayment and favorable resolution efforts, he mitigated the Government's financial 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 financial considerations security 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.m:

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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge