



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



In the matter of:)
)
-----) ISCR Case No. 20-03365
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2022

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On February 17, 2021, the Department of Defense (DoD) Consolidated Central Adjudications Facility 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 March 8, 2021 and requested a hearing. This case was assigned to me on October 26, 2021. A hearing was scheduled for December 9, 2021, and heard on the date as scheduled. At the hearing, the Government's case consisted of six exhibits (GEs 1-6). Applicant relied on one exhibit (AE A) and one witness (himself). The transcript (Tr.) was received on December 15, 2021.

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 information on his debts covered by SOR ¶¶ 1.a (\$9,187), 1.d (\$1,695), 1.f (\$118), and 1.k (\$2,271). For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded three days to respond. Within the time permitted, Applicant supplemented the record with documentation of his payment history of debts covered by SOR ¶¶ 1.a and 1.h, as well as his payment history with respect to SOR ¶ 1.j. He also provided endorsements. Applicant's submissions were admitted as AEs B-D.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 11 delinquent debts exceeding \$33,000. Allegedly, these debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted most of the alleged debts with explanations. He denied the allegations covered by SOR ¶¶ 1.g and 1.i, claiming he was unaware of the debt covered by SOR ¶ 1.g and a return of the equipment covered by SOR ¶ 1.i. Addressing the allegations he admitted, he claimed he is working to resolve the listed debts covered by SOR ¶¶ 1.a and 1.j (two repossessed vehicles), as well as those debts covered by SOR ¶¶ 1.b-1.e and 1.h-1.k.

Findings of Fact

Applicant is a 40-year-old mechanic for 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 August 2002 and divorced in September 2011. (GE 1) He has two children from this marriage (ages 19 and 18). He remarried in June 2013 and divorced in March 2017. (GE 1) He has no children from his most recent marriage. Applicant attended college classes between August 2009 and August 2010 but did not earn a degree or diploma. (GE 1) He enlisted in the Air Force in July 2000 and served four years of active duty before receiving an honorable discharge in July 2006. (GE 1)

Between August 2017 and December 2021, Applicant was employed by his last reported employer, who sponsored him for his security clearance. (GE 1 and AE E; Tr.

28) In a post-hearing submission in December 2021, he reported he has resigned his position and no longer requires a security clearance. (AE E) Previously, he was employed by other employers in various positions. He has held a security position while employed by his last-reported employer of record.

Applicant's finances

Between 2014 and 2017, Applicant accumulated 11 delinquent medical and consumer debts (including an adverse judgment obtained by SOR creditor 1.j in October 2017 for \$13,578) exceeding \$33,000. (GEs 2-6; Tr. 16-20, 40) He attributed his debt delinquencies to a difficult divorce from his second wife in March 2017 and poor financial decisions. (Tr. 30-31)

To date, Applicant has made little progress in resolving his debt delinquencies. More specifically, he has been unable to document any of his listed SOR debts with voluntary payments. While one of the listed SOR debts (a \$13,578 adverse judgment entered against Applicant in June 2018 and covered by SOR ¶ 1.j) appears to have been reduced by a combination of garnishment and voluntary means (GE 6; Tr. 25-26, 37), the judgment debt remains unsatisfied without any evidence of recent efforts by Applicant to satisfy the balance.

Based on the documentation in evidence, none of Applicant's remaining debts covered by SOR ¶¶ 1.a-1.i and 1.k have been addressed and paid, or otherwise satisfied by other voluntary means. (GEs 2-5; Tr. 21-22, 31-34) Neither Applicant's pre-hearing or hearing claims to have satisfied most of the listed SOR debts nor his promises to do so, are enough to credit him with resolving his debt delinquencies. One of Applicant's small debts (notably SOR ¶ 1.g), he could not identify. (Tr. 36-37) Other previously delinquent debts were discharged in bankruptcy in 2007. (Tr. 43)

Afforded post-hearing opportunities to address his delinquent medical and consumer debts with documented payments and payment plans, Applicant did not provide any documentation of resolving his listed SOR debts. He earned \$65,000 in calendar year 2021 from his listed employment and owns a metal fabrication business that nets him an additional \$6,600 a year. (Tr. 68-69)

Monthly child support payments to his first spouse for his youngest child totals \$103 a month and are current. His other monthly expenses exceed \$3,000, which leave him with a monthly remainder in the range of \$1,500 to \$1,800. (Tr. 38-39, 41-42) Applicant has a savings account of around \$1,000 and a modest 401(k) retirement account. (Tr. 42-43) He claims an improved credit score as evidence of his making progress with his debts. (Tr. 77)

Character references

Applicant is held in high regard by his coworkers who hold security clearances themselves, but only one of his coworkers expressed any awareness of the financial issues affecting his security clearance. (AE B) All of his references credit Applicant with integrity, good judgment, reliability, and strong moral ethics. Each of his character

references considers him to be worthy of holding a security clearance or position of trust.

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 debts over a four-year span (2014-2017) that he has not paid or otherwise favorably resolved. Applicant’s accrual of delinquent 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.

Applicant’s admitted debts negate the need for any independent proof. 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 some initial judgment issues. See ISCR case No. 03-01059 at 3 (App. Bd. Sept. 24 2004).

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 debt delinquencies

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 history of financial difficulties associated with his post-divorce in 2017, have not for the most part been addressed by any documented post-divorce payment initiatives.

Extenuating conditions played some role in Applicant’s debt accumulations during his post-divorce struggles to satisfy the debts assigned to him in his 2017 divorce decree. 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,” partially applies to Applicant’s situation. While he satisfied the first prong of the mitigating condition, he failed to exhibit the responsible repayment efforts required to satisfy the second prong of MC ¶ 20(d).

By failing to settle or resolve most of his accounts (excepting for the small debt covered by SOR ¶ 1.g which is credited to him), Applicant has not been able to

successfully stabilize his finances and reduce the risks of recurrent financial issues. Based on the evidence developed in the record, none of the other potentially available mitigating conditions may be relied on by Applicant.

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 not addressed his listed SOR debts with documented payments and payment plans necessary to satisfy minimum criteria to meet the eligibility requirements for holding a security clearance.

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. Applicant is entitled to major credit for his military and civilian contributions to the DoD and defense industry, respectively. His positive character references, while worthy of considerable credit, are not enough at this time to overcome his past account delinquencies and restore his finances to current status.

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 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.f and 1.h-.k:	Against Applicant
Subparagraph 1.g:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge