



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



In the matter of:)
)
-----) ISCR Case No. 21-01285
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2022

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On October 31, 2021, 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); *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 November 12, 2021, and elected to have her case decided on the basis of the written record, in lieu of a hearing. The case was assigned to me on March 22, 2022. Applicant received the File of Relevant Material (FORM) on January 25, 2022, and interposed no objections to the materials in the FORM. Afforded an opportunity to supplement the FORM, Applicant did not provide any supplemental information.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 12 delinquent debts exceeding \$23,000. Allegedly, the listed delinquent debts in the SOR remain unresolved and outstanding.

In her response to the SOR, Applicant admitted all of the alleged debts with explanations. She claimed she does not have the funds to pay the debts alleged in the SOR. She also claimed to have had an abusive marriage with her ex-husband that left her with emotional and financial hardships. She claimed her broken marriage left her with difficult choices: either pay her debts or provide for her children's needs as a single parent. She further claimed she has been working part-time since her children have become emancipated and only recently has accepted full-time employment.

Findings of Fact

Applicant is a 45-year-old service representative 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 April 2001 and divorced in June 2003, claiming her marriage was never valid. (Item 2) She has two children from this marriage. (Item 2) Applicant earned a high school diploma in June 1994 and reported no post-high school credits. (Items 2-3) She reported no military service, and has never held a security clearance.

Since 2021, Applicant has been sponsored for a security clearance by her current employer. Between January 2009 and 2016 and November 2021, she worked for other employers in various jobs. (Items 2-3) She reported brief unemployment between November 2020 and 2021.

Applicant's finances

Between 2015 and 2018, Applicant accumulated 12 delinquent debts exceeding \$23,000. (Items 3-6) Citing a lack of funds, she has made no documented progress in addressing her delinquent debts covered in the SOR. Applicant attributed her debt delinquencies to financial problems associated with her June 2003 separation. With her limited income from her employment and her single-parent responsibilities that she

inherited from her troubled marriage, she has not been able to address her delinquent debts. (Items1-3)

Because there is a lack of documented information from Applicant in the record to assess what plans she has to address her SOR-listed delinquent debts (both now and in the future), no favorable inferences can be drawn as to any future prospects she might harbor for resolving her debts. Based on the lack of any payment history and limited information developed in the record to date, Applicant's payment prospects for addressing her delinquent accounts remain unclear at best. Absent documentation from Applicant of her addressing her outstanding delinquent accounts with pay-offs and payment plans, or successfully resolving any disputes she may still have with any of the listed SOR creditors, resolution of Applicant's disputed accounts cannot be favorably established.

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.

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 2015 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 to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s admitted debt delinquencies 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 ad 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 her still-unresolved delinquent

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

Based on the information Applicant furnished, extenuating circumstances played no material role in Applicant's accumulation of delinquent accounts. Gainfully employed since 2009 (except for a brief period of unemployment in December 2020), she provided little documentation as to how she budgeted and addressed her debts following her separation from her ex-husband of two years in 2013. Whether her ex-husband provided any financial assistance for her two children (since emancipated) is unclear.

Why Applicant did not begin to address her delinquent accounts in a material way with the resources available to her is not explained in her SOR response in sufficient detail to facilitate any meaningful assessments about the current condition of her finances and her failure to make any progress in resolving her delinquent accounts. With so little financial information to work with relative to the circumstances prompting her to fall behind with her SOR-listed delinquent accounts and later fail to address them responsibly with payments and payment plans with the income resources available to her from her full-time employment, no meaningful extenuation credit can be assigned to her at this time.

Afforded opportunities to provide clarification of her financial conditions and explanations of her lack of payment progress on her delinquent accounts, Applicant provided insufficient information for (a) how she allowed her debts to become delinquent with her past and current income available to her and (b) why she has failed to take more documented steps to address her delinquent accounts once her finances had improved. To date, she has not paid or otherwise resolved any of the listed delinquent accounts in the SOR. Promises (express or implied) by an applicant to pay or otherwise resolve delinquent debts in the future without well-developed repayment plans do not meet Appeal Board requirements for establishing for establishing a track record for paying debts in a timely manner and otherwise acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019); ISCR Case No. 09-05252 at 3 (App. Bd. Dec. 3, 2010).

For 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 her failure to date to establish a meaningful track record of addressing her delinquent accounts, it is too soon to make safe predictive assessments as to whether Applicant can restore her finances to 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 Applicant's failure to adequately address her delinquent debts are otherwise compatible with DoD requirements for holding a security clearance. While Applicant is entitled to some credit for her contributions to the defense industry, her employment contributions are not enough at this time to overcome her accumulated

delinquent debts and her lack of a meaningful track record for dealing with them and maintaining responsible control of her finances.

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 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.l:

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