



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



In the matter of:)
)
-----) ISCR Case No. 20-00473
)
Applicant for Security Clearance)

Appearances

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

06/07/2022

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 1, 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 October 21, 2021 and elected to have his case decided on the basis of the written record, in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on March 29, 2022, and interposed no objections to the materials in the FORM. Afforded an opportunity to supplement the FORM, Applicant did not provide any additional information. The case was assigned to me on May 13, 2022

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file his federal and state income tax returns for at least tax year 2013, as required; (b) accrued delinquent federal income taxes for tax year 2018 in the amount of \$1,587; (c) accumulated delinquent consumer debts exceeding \$39,000; and (d) filed for Chapter 13 bankruptcy relief in about May 2013, which was dismissed in about July 2013. Allegedly, the debts alleged to be delinquent have not been resolved and remain outstanding.

In his response to the SOR, Applicant denied all but two of the allegations and added attachments to his response. He admitted the allegations covered by SOR ¶ 1.b (delinquent taxes owed the federal Government) and SOR ¶ 1.g (filing for Chapter 13 bankruptcy relief). These allegations remain outstanding and unresolved.

Findings of Fact

Applicant is a 51-year-old civilian employee of 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 December 1992 and divorced in September 2006. (Item 3) He has no children from this marriage. He remarried in October 2017 and divorced in April 2018. (Item 3) He has no children from this marriage. (Item 3) Applicant earned technical certifications in December 1994 and September 2000. (Item 3) He reported no military service.

Since January 2012, Applicant has been employed by his current employer as a technical architect. (Item 3) Previously, he worked for other employers in various types of technical positions. Applicant has never held a security clearance. (Item 3)

Applicant's finances

Applicant failed to timely file his federal and state income tax returns for tax year 2013. (Item 4) His interrogatory responses and incorporated IRS tax transcript for tax year 2013 document that he didn't file either his federal or state tax return until November 2016, well after the expirations of any obtained filing extensions. (Item 4) Tax records document that he is indebted to the Federal Government for delinquent taxes owed for tax year 2018 in the amount of \$1,908 (inclusive of interest and penalties) as

of August 2020. (Item 4) His tax account transcripts for tax years 2014-2018 confirm that any tax refunds owed to Applicant for these years were redirected to satisfy taxes owed for his earlier IRS tax years. (Item 4) To date, Applicant has provided no evidence of his addressing his delinquent federal taxes owed for tax year 2018.

Besides his 2018 federal tax debt, Applicant accumulated four delinquent consumer debts exceeding \$39,000 between 2012 and 2020. (Items 3-7) Credit reports reveal no efforts on Applicant's part to address these debts (covered by SOR ¶¶ 1.c-1.f).

In May 2013, Applicant filed for Chapter 13 bankruptcy relief. (Items 3-7). He reportedly scheduled \$19,000 in debts. (Item 4) Of these scheduled debts, his primary debt of concern was a mortgage debt on his home. (Item 4) Once he was able to arrange new payment terms with his lender, he simply stopped paying the trustee on his agreed plan payments. Applicant's Chapter 13 petition was thereafter dismissed in July 2013 for lapses in approved plan payments. (Item 4) Some of the accounts that are covered by the SOR were included in Applicant's Chapter 13 bankruptcy petition. Applicant's assigned reason for accumulating his delinquent debts was his prioritizing his needs to provide financial assistance to his family members over his taking responsibility for paying his debts in a timely manner and keeping his finances in sound working order. (Item 4)

Since January 2012, Applicant has been employed consistently by his current employer without any reported interruptions in his work schedules. To date, he has not made any documented progress in addressing his delinquent federal tax and consumer debts. Afforded an opportunity to supplement the FORM with updated information about addressing his debts, he failed to do so.

Because there is a lack of documented information from Applicant in the record to assess his reported delinquent tax and consumer accounts, no favorable inferences can be drawn as to whether he will be able to resolve his SOR-listed debt delinquencies in the foreseeable future. Based on his untimely filing of his 2013 federal and state tax returns and the absence of sufficient evidence of addressing his SOR-listed delinquent accounts, Applicant's prospects for resolving his debt delinquencies are uncertain at best.

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. The 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 failures to timely file his federal and state income tax returns for tax year 2013. Additional security concerns are raised over

his accumulations of delinquent debts, both owed federal taxes for tax year 2018 and delinquent consumer debts accumulated between 2012 and 2020.

On the strength of the evidence presented, three disqualifying conditions of the Adjudicative Guidelines (DCs) for financial considerations apply. DC ¶¶ 19(a), “inability to satisfy debts,” 19(c), “a history of not meeting financial obligations”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required”; all apply to Applicant’s situation.

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 tax-filing failures and debt delinquencies (inclusive of both tax and other debts) 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 and 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 his timely tax-filing lapses for tax year 2013 and his delinquent debt accruals (both tax and consumer debts) raise considerable concerns over his ability to manage his 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 for many years (at least since 2012), he provided little documentation as to how he budgeted and addressed his tax-filing and debt management responsibilities before receiving the SOR in October 2021. Why he waited so long to address his 2013 federal and state income tax returns and delinquent tax and consumer and accounts in a material way with the resources available to him prior to receiving the SOR is unclear. With so little financial information to work with relative to the circumstances prompting him to fall behind with his timely tax-filing obligations in 2013, and addressing his tax and other delinquent accounts, no meaningful extenuation or mitigation credit can be assigned to him at this time.

To date, Applicant has not resolved his outstanding tax and other delinquent accounts. 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 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).

Based on Applicant's failure to date to establish a meaningful track record of timely filing of his federal and state income tax returns and addressing his delinquent tax and other debt delinquencies in a responsible way, it is too soon to make safe predictive assessments as to whether Applicant can restore his finances to stable levels consistent with minimum requirements for holding a security clearance. More time and payment initiatives are required to enable Applicant to meet his evidentiary and persuasive burdens of proof.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether Applicant's failure to timely file his federal and state income tax returns for tax year 2013 and adequately address his delinquent tax and other debts are otherwise compatible with DoD requirements for holding a security clearance. While Applicant is entitled to credit for his contributions to the defense industry, his employment contributions are not enough at this time to overcome his tax-filing lapses and his lack of a meaningful track record for dealing with them, paying his delinquent debts, and maintaining responsible control of his 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 through 1.g:	Against Applicant
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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

