



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



In the matter of:)
)
-----) ISCR Case No. 20-02916
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, 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 January 25, 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); 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 8, 2021, and requested a hearing. This case was assigned to me on February 18, 2022. A hearing was scheduled for April 19, 2022, by TEAMS remote video-teleconference. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on five exhibits (AEs A-E) and one witness (himself). The transcript (Tr.) was received on May 5, 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 documentation of his addressing his 2015-2019 federal and state income tax returns. 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 documented updates of taxes owed the Internal Revenue Service (IRS) for tax years 2015-2019. Applicant's submissions were admitted as AEs F-G.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) accumulated a delinquent consumer debt for \$13,248; b) failed to timely file his federal income tax returns for tax years 2015 through 2019 and is indebted to the Internal Revenue Service (IRS) for \$18,620 for delinquent federal income taxes; and (c) failed to timely file his state income tax returns for tax years 2015 through 2019 and is indebted to his state of residence for \$18,363 for delinquent state income taxes.

In his response to the SOR, Applicant admitted two of the three allegations (SOR ¶¶ 1.a-1.b) covered by SOR ¶¶ 1.a-1.c with explanations. He claimed he was working with a credit financial advisor to fix any outstanding debts (inclusive of his SOR ¶ 1.a debt). He also claimed he filed his late federal tax returns and is waiting for documented receipt of his returns from the IRS. He further claimed that he has filed his state tax returns for tax years 2015-2019 and is waiting for confirmation. Addressing his finances in general, Applicant claimed that he ran into financial hardships in 2017 with unexpected events (inclusive of paying for his child's health bills) and is now in a better place financially with secure employment to fix his debt. He claimed he will keep working towards proving he is a responsible citizen.

Findings of Fact

Applicant is a 51-year-old 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 January 2017 and has four children from prior relationships, two of whom reside with him and his wife. (GE 1; Tr. 17, 33-34) He earned a high

school diploma in June 2005. (GE 1) Applicant did not report any military service and has never held a security clearance. (GE 1)

Since June 2019, Applicant has been employed by his current employer as a heavy equipment mechanic. (GEs 1-2; Tr. 17, 19-20) Between June 2005 and June 2019, he worked for other employers in various technician jobs. (GE 1; Tr. 20-21)

Applicant's finances

Between 2015 and 2019, Applicant failed to timely file his federal and state income tax returns. (GE 2) His tax records document his preparing and filing his federal and state tax returns for these years (2015-2019) in July 2020. (GE 2; Tr. 25-26) Applicant attributed his failures to timely file his tax returns to his limited understanding of the importance of timely filing of his federal and state income tax returns and his reserving no withholding on both his federal and state tax withholding forms. (GE 2; Tr. 23-24)

For tax years 2015-2019, Applicant accumulated delinquent federal taxes owed for these tax years as follows: \$10,515 for tax year 2015; \$11,790 for tax year 2016, \$9,709 for tax year 2017; \$2,888 for tax year 2018, and \$3,718 for tax year 2019. (GE 2) Cumulative federal taxes owed for these 2015-2019 tax years totaled \$38,620. (GE 2; Tr. 24-25)

Besides accruing over \$38,000 in delinquent federal taxes for tax years 2015-2019, Applicant accumulated approximately \$18,363 in delinquent state taxes owed his state of residence for these tax years. His reported delinquent state taxes are as follows: \$3,582 for tax year 2015; \$3,829 for tax year 2016; \$3,124 for tax year 2017; \$1,396 for tax year 2018; and \$6,432 for tax year 2019. (GE 2)

In April 2021 (following the issuance of the SOR), Applicant entered into an installment agreement with the IRS to pay off his accrued delinquent federal taxes for tax years 2016-2017 and 2019. (AE C) Monthly payments set by the IRS called for initial payments of \$245 a month, beginning in May 2021, and increased payments of \$440 a month, beginning in May 2022. (AE C) Furnished debit balances from the IRS report reduced balances owed for these tax years as follows: 2015 (0 balance owing), 2016 (\$5,952 balance owing), 2017 (\$5,536 balance owing), 2018 (\$1,973 balance owing), and 2019 (\$8,048 balance owing). (AE F) These reported balances total approximately \$21,509 and implicitly reflect cumulative interest and penalties accrued, as well as reductions attributable to credited Applicant payments and other credits. (AE F) Whether Applicant has maintained his compliance with the terms and conditions set by the IRS in his installment agreement is not fully validated.

In July 2021 (following the issuance of the SOR), Applicant entered into an installment agreement with his state of residence. (AE E) Under the terms of this installment agreement, Applicant obligated himself to accept monthly electronic fund deductions from his checking account in the amount of \$379, beginning in August 2021. (AE E) Installment terms required Applicant to maintain adequate funds in his bank

account for the electronic funds withdrawal each month, beginning in August 2021. Whether Applicant has maintained his compliance with his state installment agreement's conditions and requirements is unclear. (AE E)

In addition to his tax debt delinquencies, Applicant incurred a deficiency on a \$17,196 car loan he took out in December 2015 to finance his purchase of an automobile. (GEs 2-4) Finance terms called for monthly payments of \$697 for 36 months. (GEs 2-4) After his wife quit her job to stay home with their daughter who had special medical needs, Applicant faced considerable insurance co-pays on his hospital and other medical bills associated with his daughter's medical needs. As a working father with only his income to manage his household needs, he could no longer afford the monthly payments on his automobile. (GE 2; Tr.21-22)

After making his last payment on his SOR 1.a vehicle loan balance in December 2018, Applicant surrendered the vehicle to the auto vendor. (GE 4; Tr. 22-23) He later learned that the vehicle was sold at auction for less than the amount he owed on his car loan. (GE 2 and AE B; Tr. 22-23) With his wife's return to the work force, Applicant was able to pay off the reported deficiency balance (n May 2021) following the public sale of the vehicle at a published auction. (AE B; Tr. 18) Why he waited so long (over four months after the issuance of the SOR in January 2021) to pay off his SOR ¶ 1.a deficiency balance is unclear. (AE B; Tr. 22-23)

Applicant's April 2021 credit report reflects considerable improvement in his management of his finances. (AE D) His most recent credit report assigned credit scores ranging between 625 and 642 and included a serious delinquency that kept his credit score from moving into a higher scoring range. (AE D)

Endorsements

Applicant is well-regarded by his colleagues and friends who have known and worked with hm. (AE A) Uniformly, they credit him with a good attitude and work ethic. (AE A)

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 multiple failures to timely file his federal and state tax returns from 2015 through 2019. Additional security concerns are raised over his accumulation of delinquent federal and state debts for tax years 2015-2019 and a delinquent consumer debt arising out of a defaulted car loan.

Applicant’s failure to timely file his federal and state income tax returns for tax years 2015-2019 and his accumulation of delinquent debts (comprised of federal and state tax debts and a consumer debt arising out of a defaulted car loan) warrant the

application of four of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19(b), unwillingness to satisfy debts regardless of the ability to do so”; 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.” Each of these DCs apply to Applicant’s situation.

Applicant’s admitted tax filing lapses and accumulated debt delinquencies 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 his 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 debt delinquencies

Historically, the timing of addressing and resolving tax-filing obligations and 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 failure to timely file his federal and state tax returns for multiple years (2015-2019) and address his accrued delinquent taxes and auto loan deficiency in a more responsible way preclude him from taking advantage of most of the potentially available extenuating and mitigating benefits.

While some extenuating benefit to Applicant is warranted based on the emergency medical circumstances of his daughter that placed some strains on his personal finances, his cited multiple failures to timely file his federal and state tax returns, as required, and failure to address his federal and state income tax and car loan delinquencies in a responsible way once his finances improved significantly limit the potential availability of extenuating and mitigating benefits to him.

As a result, 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,” has only partial application to Applicant’s situation. His failure to satisfy the second prong (“acted responsibly under the circumstances”) of MC 20(b) is conjunctive and is the key prong that prevents him from gaining any more than limited application of MC 20(b)

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of timely filing of federal and state income tax returns and the initiation of voluntary debt reduction before the initiation of the security clearance application process is commenced. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant’s case, he failed (a) to take any documented voluntary steps to address his federal and state tax-filing lapses before the issuance of the SOR and (b) failed to complete installment agreements with the IRS and state taxing authority before submitting his security clearance application in August 2019.

The Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to timely tax-filing, delinquent federal and state taxes, or other debt delinquencies. 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). Afforded hearing and additional post-hearing opportunities to satisfy his evidentiary burden, Applicant has not provided sufficient evidence of his addressing of his tax-filing and associated accruals of tax debt delinquencies responsibly to satisfy his evidentiary burden.

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 clearance. While Applicant is entitled to credit for his work in the defense industry and satisfying the outstanding deficiency balance on his defaulted car loan, his efforts are not enough at this time to overcome his failures to responsibly resolve his multiple tax-filing lapses and his associated tax debt delinquencies, consistent with the requirements established by the Appeal Board for managing an applicant’s federal and state tax obligations. Overall trustworthiness, reliability, and good judgment have not been established in this evidentiary record.

Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to mitigate the Government’s financial concerns within the foreseeable future. More time is needed for Applicant to establish the requisite levels of stability with his finances to establish his overall worthiness 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 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.b-1.c: Against Applicant

Subparagraph 1.a: 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