



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



In the matter of:)
)
) ISCR Case No. 19-02566
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

10/03/2022

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 June 29, 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 March 10, 2021, and requested a hearing. She filed a supplemental response on June 29, 2020, that was not included in the pre-hearing file. Department Counsel included this supplemental exhibit as GE 1. This case was assigned to me on February 7, 2022. A hearing was scheduled for July 27, 2022, via TEAMS, and was heard on the scheduled date. At the hearing, the Government's case consisted of eight exhibits. (GEs 1-8) Applicant relied on one witness (herself) and two exhibits. The transcript (Tr.) was received on August 4, 2002.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documentation of her payments to her SOR-listed creditors. For good cause shown, Applicant was granted seven calendar days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with documented payoffs of SOR creditors ¶¶ 1.c and 1.d. She reported unsuccessful attempts to obtain identifying information on her remaining accounts. Applicant's post-hearing submissions were admitted without objections as AEs B-D. A hearing submission documenting a dismissal of a non-SOR hospital debt is admitted as well as AE E.

Summary of Pleadings

Under Guideline F of the SOR, Applicant (a) petitioned for Chapter 13 bankruptcy relief in May 2015, a petition which was dismissed in April 2016 for inability to file an acceptable plan, and (b) accumulated eight delinquent medical and consumer debts exceeding \$42,000. Allegedly, these debts have not been resolved.

In her response to the SOR, Applicant admitted her petitioning for Chapter 13 bankruptcy relief in May 2015, but denied each of the alleged delinquent debts, claiming the accounts either no longer existed or "were being taken care of." See Applicant's supplemental response. She also claimed that her Chapter 13 bankruptcy petition was dismissed because the court raised the amount of her monthly payments to an amount which she could not afford. In her supplemental response (undated), she corrected her answers and admitted all of the SOR allegations with explanations.

Findings of Fact

Applicant is a 55-year-old civilian of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

Background

Applicant never married and has one adult child (age 37) from a prior relationship, and a granddaughter who resides with her mother. (GE 2; Tr. 26) She

earned a high school diploma in July 1981, and another in July 1983. (GE 2) She reported no military service.

Since January 2018, Applicant has been employed by her current employer as a security officer. (GEs 1-2) She has held part-time jobs since 2016 to supplement her income and currently earns \$27 an hour with her part-time employers. (Tr. 49-50) Between September 2006 and December 2017, she worked for other employers in security officer positions. (GE 1; Tr. 27-28) She has held a security clearance since August 2008 in the same building for her work as a security officer. (GE 2)

Applicant's finances

Burdened by her ongoing efforts to help her family at home, she petitioned for Chapter 13 bankruptcy relief in May 2015. (GE 3; Tr. 24) In her bankruptcy petition, she scheduled real property totaling \$351,971 and personal property totaling \$41,234. (GE 3) On the liability side of her reported accounts, she scheduled secured claims of \$339,940 and unsecured non-priority claims of \$88,812. (GE 3) Unable to satisfy the revised monthly payments set by the bankruptcy court, she accepted a dismissal of her Chapter 13 petition in April 2014. (GEs 1 and 3; Tr. 24, 33-34)

Bankruptcy records and credit reports document Applicant's (a) petition for Chapter 13 bankruptcy relief and (b) her accumulation of eight delinquent debts between 2011 and July 2022, exceeding \$42,000. (GEs 4-8) Applicant attributed her debt delinquencies to providing financial assistance to her family members (*i.e.*, to the sister of her child, as well as to funds she expended to further her education. (Tr. 25, 31-32)

Included SOR debts are as follows: 1.b (a utility debt for \$439); 1.c (a federal loan for \$23,768), 1.d (a commercial loan for \$10,677); 1.e (a collateralized car loan with \$3,375 in past due payments on an overall balance of \$48,234); 1.f (a credit card debt for \$2,356); 1.g (a utility debt for \$1,395); 1.h (a medical debt for \$891); and 1.i (a consumer debt for \$242). (GEs 3-8) These debts are listed in Applicant's credit reports as unresolved and outstanding. (GEs 4-8) Shortly after her Chapter 13 bankruptcy petition was dismissed, Applicant retained a credit repairing firm to help her ensure that her reported delinquent debts were accurate. (Tr. 34) Once these reported debts were verified, she contacted the creditors herself to try to make settlement arrangements with the identified creditors. (Tr. 34-35)

Applicant was able to make contact with her SOR creditors. However, she was only successful in documenting her payoffs of creditors covered by SOR ¶¶ 1.c and 1.d. (AEs A-D; Tr. 37-39) These documented payoffs for reduced amounts covered over \$34,000 of the total debt amounts listed in the SOR and represent two of her largest debts. (AEs A-D) Her post-hearing efforts to identify and work out payment arrangements with her remaining creditors (SOR ¶¶ 1.b and 1.e-1.i), while successful according to Applicant, are not documented with payoffs or payments. (Tr. 39-44) Among Applicant's major alleged SOR debts that are not documented with payments or

payment plans is an account with a car retailer covered by SOR ¶ 1.e (a car loan for the purchase of a luxury vehicle) with a past due amount owing on a \$48,234 loan balance). Credit records report that she last made a payment on this account in June 2015. (GEs 7-8) Applicant's claims that she has made more recent payments and is current with this loan account are not documented and cannot be accepted without verification. (Tr. 40-42)

Promising at hearing to provide post-hearing documentation of the current status of her SOR ¶ 1.e account, Applicant did not provide any updated verification of the current status of the account, citing her "inability to get more information on the accounts in question." (AE B) Based on available information, Applicant's loan deficiency with her car loan remains unpaid and unresolved. Applicant's remaining debts covered by the SOR (1.b and 1.e-1.i) remain unpaid and unresolved as well. While most of these debts have fallen off of her most recent credit reports (notably debts covered by SOR ¶¶ 1.b and 1.e-1.i), age (and not payment) of the debts is inferentially the most likely reason for their more recent disappearance from Applicant's credit reports. Without more documented verification clarification from Applicant, favorable inferences of voluntary, good-faith resolution of these debts cannot be drawn.

One of the debts Applicant addressed is a non-SOR debt covering a hospital debt was dismissed by a court presiding over the creditor's complaint. (AE E) While Applicant was successful in selling her home, she used the proceeds of the sale (\$520,000) to finance her new house and set aside no funds to address her delinquent debts. (Tr. 42-43)

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 dismissed Chapter 13 bankruptcy petition and her reported accumulation of eight delinquent accounts. These debt delinquencies warrant the application of three 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 eight admitted debts with explanations and clarifications 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 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 she qualified her admissions with explanations, her 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 income limitations impaired her ability to make her timely monthly payments on her debts and prompted her to seek Chapter 13 bankruptcy help in resolving her delinquent accounts, and this failing, to retain a financial counseling firm to assist her. 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 partial application to any remaining delinquent loan balance covered by SOR ¶ 1.a.

Two major consumer debts associated with Applicant's SOR accounts (many attributable to her providing financial help to her daughter) have been satisfied and resolved by Applicant with credited payoffs through reduced amounts (SOR ¶¶ 1.c-1.d) For these resolved accounts, application of MC ¶¶ 20(c), "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control" and 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts" are partially applicable to Applicant's financial situation.

In addressing her remaining debt delinquencies, Applicant has been less successful. Afforded opportunities to document her claimed payoffs of her remaining accounts (SOR ¶¶ 1.b and 1.e through 1.i), she has been unable to provide any supporting documentation (even with afforded post-hearing opportunities) to verify her hearing claims that she has taken care of these debts. Because most of her accumulated debts are aged, their omission from Applicant's most recent credit reports may quite possibly be the result of either the expiration of statutes of limitation in her state or the reporting policies of credit reporting agencies when covering debts over six years' delinquent. Either way, omission of some of her older consumer and medical

debts from her most recent credit reports cannot, without more information from Applicant, be credited to her as voluntarily paid or otherwise favorably resolved.

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. 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). By the evidence presented, Applicant is not able to demonstrate any tangible track record Of actual debt reduction.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether her finances are fully compatible with minimum standards for holding a clearance. Taking into account of both Applicant’s credited defense contributions and her explanations of the debts attributed to her in the SOR, insufficient evidence has been presented to enable her to maintain sufficient control of her finances to meet minimum standards 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.a-1.b and 1.e-1.i:	Against Applicant
Subparagraphs 1.c-1.d:	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