



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



In the matter of:)
)
-----) ISCR Case No. 20-01610
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

09/22/2022

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On February 19, 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 March 26, 2021, and requested a hearing. This case was assigned to me on May 4, 2022. A hearing was scheduled for August 16, 2022, via TEAMS remote teleconferencing services, and was heard on the scheduled date. At the hearing, the Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on one witness (himself) and five exhibits. The transcript (Tr.) was received on August 25, 2022.

Procedural Issues

Prior to the opening of the hearing, the Government amended the SOR to add a fifth delinquent debt for \$9,414. (SOR ¶ 1.e) Applicant admitted the debt as alleged.

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with documented payoffs of debts covered by SOR ¶¶ 1.a-1.e. For good cause shown, Applicant was granted 14 calendar days to supplement the record. Department Counsel was afforded three days to respond. (Tr. 27) Within the time permitted, Applicant supplemented the record with documented payoffs of the debts alleged in the SOR. Applicant's post-hearing submissions were admitted without objection as AEs F-J.

Summary of Pleadings

Under Guideline F of the SOR, Applicant accumulated five delinquent educational and consumer debts exceeding \$46,000. Allegedly, these debts have not been resolved.

In his response to the SOR, Applicant admitted three of the alleged debts (SOR ¶¶ 1.b-1.b and 1.d-1.e), but denied the remaining debts covered by SOR ¶¶ 1.a and 1.c, and provided explanations for each of his responses. He claimed his mortgage is current and he is in the process of resolving his remaining accounts.

Findings of Fact

Applicant is a 58-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations admitted are incorporated in the findings. Findings of fact follow.

Background

Applicant married in August 1990 and has two adult children from this marriage. (GE 1) He attended college classes between January 2000 and May 2000, but he did not earn a degree or diploma. (GE 1) He reported no military service.

Since April 2017, Applicant has been employed by his current employer as a machine supervisor. (GE 1; Tr. 47-48) He was employed by this same employer between December 1995 and September 2014 before leaving this employer for a two-

year period of self-employment with his father in a joint venture start-up tooling company (2015-2017). (GE 1; Tr. 46-47)

Without any income from his start-up venture, Applicant fell behind with his creditors. By December 2016, following a tornado strike on his home, he became delinquent on his home with virtually no income to fund his mortgage and necessary repairs to his home. (Tr. 47) Applicant has never held a security clearance and is currently sponsored by his employer for a clearance. (GE 1)

Applicant's finances

Applicant purchased a home in November 2014 and financed it with a mortgage of \$165,000. (GEs 2-3; Tr. 33, 56) He replaced this mortgage in August 2017 with a new mortgage of \$214,000. (GEs 2-3 and AEs A-B; Tr. 32-33) Credit records document that this mortgage was purchased by another lender for \$218,000. (GEs 2-3) In February 2022, Applicant refinanced his home with another mortgage lender for \$326,000 (GEs 2-3 and AEs A-B; Tr. 31-34, 59-60)

After the payoff of his first mortgage, Applicant received around \$70,000 from the loan disbursements, which he used to pay off his remaining debts and get "us totally out of debt with that." (AEs F-J; Tr. 87-88) In refinancing his home with his current mortgagee, he was able to lower his mortgage while saving interest accruals on his debts.

Between August 2010 and December 2015, Applicant opened a number of education and consumer accounts. Credit reports confirm he co-signed a student loan with his daughter that included a high credit allowance of \$16,786. (GEs 2-3) While his daughter made several payments initially on the loan, she failed to follow through with her scheduled payments and permitted the loan to fall into default by March 2018. (GEs 2-3) Burdened by his own debts, Applicant was not financially able at the time to assume responsibility for his daughter's payment obligations. (GEs 2-3 and 5; Tr. 22-23, 36, and 47)

Other debts that Applicant could not afford to address during his extended period of underemployment and unemployment in 2016-2017 include three credit card debts covered by SOR ¶¶ 1.b and 1.d-1e. These three credit card debts have since been paid off by Applicant and no longer appear on his credit reports. (AEs B and D-J) Applicant's most recent credit reports reveal a solid credit score of 718. (AE B; Tr. 32) He maintains an average balance of \$776 in his checking account. (AE D; Tr. 38)

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 reported accumulation of delinquent accounts that he has since paid off. These reported delinquent SOR debts are accompanied by a considerable amount of extenuating circumstances and ensuing responsible payment initiatives by Applicant.

Financial concerns

Credit reports reveal that Applicant's five reported delinquent debts were unaddressed until recently. These debt delinquencies 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 obligation." Each of these DCs apply to Applicant's situation. Applicant's three 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). He 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 and clarifications, 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 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 building losses and periods of unemployment and underemployment while operating a joint venture start-up with his father over the course of a two-year period (2015-2017) impaired his ability to make his timely monthly payments on some of his credit card accounts and his daughter's student loan obligations after she defaulted on her loans.

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," fully applies to Applicant's situation. Repayment of the debts covered by the SOR enables him also to take advantage of the mitigating conditions covered by MC ¶ 20(d), "the individual initiated

and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.”

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).

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. Taking into account Applicant’s credited defense contributions and accepted explanations of the debts attributed to him in the SOR, sufficient evidence has been presented to enable him to maintain sufficient control of hm 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 mitigated. Eligibility for access to classified information is granted.

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): FOR APPLICANT

Subparagraphs 1.a through 1.e: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge