



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



In the matter of:)
)
-----) ISCR Case No. 22-00556
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis Esq. Department Counsel
For Applicant: *Pro se*

04/13/2023

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On April 5, 2022, the Defense Counterintelligence and Security Agency (DCSA) 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 (undated), and requested a hearing. This case was assigned to me on December 20, 2022. A hearing was scheduled for February 21, 2023, via Microsoft Teams Teleconference Services, and was heard on the scheduled date. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on one witness (himself) and nine exhibits. The transcript (Tr.) was received on March 2, 2023.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly (a) misused his company credit card in September 2018 for personal use, was confronted by his employer with allegations of misconduct, and left by mutual agreement and (b) accumulated 13 delinquent consumer debts exceeding \$61,000. Allegedly, these debts have not been resolved.

In his response to the SOR, Applicant admitted (a) some of the alleged SOR debts (SOR ¶¶ 1.a-1.b, 1.d, 1.g, and 1.m-1.n) with explanations. He claimed he misused his company credit card to include his family members on a company business trip and was not allowed to repay the expenditures before leaving his employment by personal agreement. He also claimed he could not pay his listed consumer debts for lack of money after losing his job.

Addressing his student loan debts, he claimed he became unable to continue paying on his student loan accounts after he lost his job in 2018. He further claimed his Department of Education (DoE) loans are currently in deferment and attached a credit report.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

Background

Applicant married in May 2010 and has three children from this marriage (ages six, eight, and nine). (GE 1; Tr. 28) He earned a high school diploma in May 2006. He earned an associates degree in May 2008 and a bachelor's degree in December 2014. (GE 1) He reported no military service, and he has never held a security clearance.

Since August 2021, Applicant has been employed by his current employer as a full-time shop mechanic. (GEs 1-2; Tr. 25-27) Between September 2012 and September 2018, he worked for a railroad as a truck driver mechanic. This job required a considerable amount of travel, and he left this job by mutual agreement in September 2018. (GEs 1-2) Previously, Applicant worked for other employers in various jobs.

Applicant's finances

Between 2016 and 2021, Applicant accumulated delinquent medical and consumer accounts exceeding \$61,000. (GEs 2-4) Included SOR debts are as follows: 1.b (a co-signed delinquent auto loan for \$16,228); 1.c, 1.e-1.f, and 1.h-1.i (delinquent student loans exceeding \$18,000); 1.d (a delinquent credit card debt for \$5,611); 1.g (a delinquent consumer debt for \$2,124); 1.m (a delinquent utility debt for \$118); and 1.n (a delinquent car loan for \$21,111). Applicant attributed these debts to insufficient resources to address his debts following his separation from his job in September 2018.

Before he was forced to leave his railroad job by mutual agreement in 2018, Applicant was charged with using his company credit card to purchase a hotel room for his wife and family. (GEs 1-2' Tr. 31) Having invited his wife and family to accompany him on a business trip, he booked a hotel upgrade to accommodate his wife and family and used his company travel card to rent the hotel room for the July 4th weekend. (GEs 1-2; Tr. 28-31)

Once Applicant's company learned of his using his company travel card to accommodate his family while on company travel, it opened an internal investigation into the matter. (GEs 1-2) After confirming the facts of the reported incident, Applicant's employer came to an agreement with him in September 2018 to separate from the company by mutual agreement. (GEs 1-2; Tr. 28-29, 32) Applicant's offer to repay the money he used to obtain an upgrade of his hotel room was declined by his employer. (GE 2; Tr. 29)

Without comparable income to address his accrued debts following his unplanned 2018 employment separation, Applicant encountered difficulties paying his debts and was unable to prevent his defaulting on them. Two of the delinquent debts involved deficient balances on vehicles purchased in 2020. Both of these accounts remain unpaid and unresolved. (Tr. 33-34, 41-42)

Other delinquent accounts belonging to Applicant include his DoE student debts (opened between 2010 and 2014). While these delinquent loans have been in deferment for the past two years, they were in delinquent status before they were placed in deferment. (GEs 2-4; Tr. 50-51) Records document eight separate student loans that were placed in collection in October 2020 prior to being placed in deferment status. (GE 2) After losing his job, Applicant became unable to continue making his scheduled monthly payments.

Applicant's remaining creditors have not been addressed with any documented payments. SOR creditor 1.d obtained a stipulated judgment against Applicant in August 2022 in the amount of \$6,052. (AE D) As a part of Applicant's settlement agreement with the creditor to forebear collection on the judgment, Applicant agreed to make monthly payments of \$52.86, beginning in August 2022. (AE E) Agreed monthly payments in compliance with his settlement agreement are not documented, and

Applicant acknowledges no more than \$500 in payments have been paid to date on this account. (AEs C-E; Tr. 36)

Neither of his three delinquent accounts with SOR creditors 1.b, 1.g, and 1.n have been addressed, and they remain unresolved and outstanding. (GEs 2-4; Tr. 39-42) Although his agreement with SOR creditor 1.m to pay off the \$118 utility debt owed to this creditor's collection agent is not documented, Applicant's payment assurances concerning this small debt are credible, corroborated in part by its deletion from his most recent credit report, and are accepted. (AE H; Tr. 40)

Applicant's financial situation remains poor. (GE 2) To date, he has been limited in his ability to manage his debts, and he has not had the monetary resources to address his delinquent accounts. (GE 2) His current plans consist of saving up enough money to pay off his debts. (GE 2; Tr. 25)

Currently, Applicant has a salary of \$29.80 an hour and has about \$100 in remaining discretionary funds after his monthly expenses are satisfied. He has never received financial counseling and has no formal budget. (Tr. 36). Essentially, he lives paycheck to paycheck. (Tr. 43) In the meantime, he continues to look for higher paying jobs that will enable him to make meaningful progress with his delinquent accounts.

Applicant cited a tentative offer made to him in July 2022 that if accepted and employed will pay him \$260 per day. (AE F) At this time, however, nothing has been finalized between Applicant and this prospective employer. (H-L)

Endorsements

Applicant's group manager who has known Applicant for almost 18 months expressed surprise to hear about Applicant's financial situation. He credited Applicant with being a model employee since he started with their company. (AE A) His group manager characterized him as a person "of upright character and integrity in the workplace." (AE A) This group manager also credited him with being an "upstanding member of the community." (AE A) And, his group manager expressed strong support for Applicant's willingness to accept responsibility for his actions.

Coworkers and friends credit Applicant with being hardworking, meticulous, trustworthy, and professional. (AE A) They characterize him as a person who can be counted on, and one who is very eager to help others.

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 (a) misuse of his company's credit card for personal use and (b) accumulation of 13 delinquent accounts. 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 obligations." Each of these DCs apply to Applicant's situation.

Applicant's admitted misuse of his company's credit card and some of his debts (i.e., SOR ¶¶ 1.a-1.b, 1.d, 1.g, and 1.m-1.n) 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). His admitted misuse of his company credit card is 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 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 2018 job loss and income limitations on his ability to address his SOR debts played some role in his accrual of so many delinquent debts over the past few years. Considering these added financial burdens associated with his losing his job, 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," partially applies to Applicant's situation.

One minor utility debt (SOR ¶ 1.m) associated with Applicant's SOR accounts has been satisfied and resolved by Applicant with a credited payoff. For this resolved account, application of 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts" bears partial application to Applicant's (albeit quite limited) financial situation.

In addressing his remaining debt delinquencies, Applicant has been less successful. Afforded hearing and post-hearing opportunities to address his still unresolved accounts, Applicant has been unable to make any material progress in addressing his still unresolved debts. Without more payment documentation on Applicant's settled accounts, these accounts still reflect unfulfilled promises to pay off the agreed settlement amounts in the future with his hopes of finding a more remunerative job. Resolution of Applicant's debt delinquencies remains a work in progress that will require more time and effort from Applicant. While Applicant's delinquent student loans remain in deferment status, at some point in the future when the enforcement pause is lifted, Applicant will need a well-developed plan to address his student loans. With the limited resources he currently has at his disposal, considerable doubts remain as to how he will be able to raise enough funds to rehabilitate his student loans.

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). Based on the evidence presented, Applicant is not able to demonstrate a sufficient tangible track record of actual debt reduction to satisfy Appeal Board guidance. Payment agreements alone that are not accompanied by material good-faith payments still reflect promises to pay that do not meet the good-faith payment requirements of MC 20(d).

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 his explanations of his one-time misuse of his company's credit card and the delinquent debts attributed to him in the SOR, insufficient evidence has been presented to enable him to maintain sufficient control of his 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.l and 1.n:
Subparagraph 1.m:

Against Applicant
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