



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



In the matter of:)
)
-----) ISCR Case No. 21-01785
)
Applicant for Security Clearance)

Appearances

For Government: Karen Marina Sayles, Esq. Department Counsel
For Applicant: *Pro se*

03/30/2023

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 September 7, 2021, the Defense Counterintelligence and Security Agency (DCSA) 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); 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 July 18, 2022. A hearing was scheduled for September 19, 2022, via Teams Teleconference 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 eight exhibits (A-H). The transcript (Tr.) was received on September 28, 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 documentation of his resolution of his SOR-listed creditors. For good cause shown, Applicant was granted 30 calendar days to supplement the record. Department Counsel was afforded seven days to respond. (Tr. 65-66)

Within the time permitted, Applicant supplemented the record with a documented payoff of one of the listed SOR creditors (SOR ¶ 1.j) and payment agreements with five of his SOR creditors ¶¶ 1.d-1.f and 1.h-1.i) He reported unsuccessful attempts to obtain payment agreements with two of his SOR creditors (SOR ¶¶ 1 a-1.b). And, he reported ongoing negotiations with his two remaining creditors (SOR ¶¶ 1.c and 1.g).

Applicant's post-hearing submissions were admitted without objection as AEs G-L. These post-hearing submissions were considered along with Applicant's admitted hearing exhibits in rendering a final decision on December 23, 2022.

Remand from Appeal Board.

On March 14, 2023, the Appeal Board remanded the case to consider post-hearing submissions covering the following: six receipts associated with payment agreements with SOR creditors ¶¶ 1.d, through 1.i and a documented monthly budget. Upon receipt of the remand decision, I opened the record to permit Applicant to further supplement the record to document updated payment receipts for the creditors identified in the remand decision and provide a documented budget covering Applicant's monthly income, expenses, and remainder. Within the time permitted to supplement the record (seven calendar days), Applicant documented his updated monthly payments to SOR creditors ¶¶ 1.d, 1.e-1.f, and 1.h-1.i. He also documented his \$8,500 payoff of his SOR creditor ¶ 1.g debt, as well as his budget covering his monthly income (\$6,500), expenses ((\$4,749), and remainder (\$1,751). Applicant's post-remand exhibits were admitted without objection as AEs M-S.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated 10 delinquent medical and consumer debts exceeding \$44,000. Allegedly, these debts have not been resolved.

In his response to the SOR, Applicant admitted most of the alleged SOR debts with explanations. He claimed to be working with the collection agencies of the covered SOR creditors to review his payment options. Applicant denied the allegations covered by SOR ¶ 1.j, claiming he worked with a collection agency for this creditor and paid off the debt in August 2021.

Addressing the SOR allegations generally, Applicant claimed he lives within his means and has maintained consistent excellent employment for the past 12 years. Also, he claimed to have lived frugally in the same apartment for the past 12 years since he started his job, and has maintained employment in the same job role at the company with consistent reports of excellent job performance without any reported incidents of wrongdoing. Further, he claimed a consistent history of trustworthy and positive contributions on and off the job. And, he claimed he has never done anything to compromise his career or the confidential data he has been assigned to protect.

Findings of Fact

Applicant is a 37-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 never married and has one child from a prior relationship for whom he is obligated to pay currently enforced weekly child support through garnished deductions of his paychecks. (GE 1; Tr. 16) He earned a high school diploma in May 2003 and a bachelor's degree in May 2010. (GE 1) He reported no military service.

Since October 2010, Applicant has been employed by his current employer as a system design engineer. (GEs 1-2; Tr. 33) He has held a security clearance since 2011. (GE 1)

Applicant's finances

Between November 2018 and December 2019, Applicant accumulated delinquent medical and consumer accounts exceeding \$44,000. (GEs 2-5) Included SOR debts are as follows: 1.a (a medical debt for \$163); 1.b (a medical debt for \$488); 1.c (a utility debt for \$272); 1.d (a consumer debt for \$2,947); 1.e (a consumer debt for \$6,428); 1.f (a consumer debt for \$950); 1.g (a consumer debt for \$15,184); 1.h (a consumer debt for \$4,625); 1.i (a consumer debt for \$8,579); and 1.j (a consumer debt for \$5,647). (GEs 2-5; Tr. 42-44) These debts are listed in Applicant's credit reports as unresolved and outstanding. (GEs 2-5) Once he was able to verify these reported debts, Applicant confirmed the following: (a) the SOR ¶ 1.j debt was previously satisfied; (b) he had either worked out settlement agreements with the creditors (SOR ¶¶ 1.d-1.f and 1.h-1.i); he was still working with the creditors. (SOR ¶¶ 1.c and 1.g); and (c) he was

unable to resolve his two remaining delinquent accounts with the information available to him (as with SOR creditors 1.a-1.b). (AEs B-L)

Applicant attributed his debt delinquencies to a poor start out of college before he even received his first paycheck from his first employer in 2010. (Tr. 31) While flying home from college, he was stopped at a local airport and cited for having a loaded, albeit legal, handgun inside his checked luggage bag. (Tr. 28) The airport citation cost him \$8,000, in addition to added attorneys fees. Additional unexpected expenses included weekly court-ordered (in August 2022) payroll garnishments of \$650 to cover his child support arrearage and payments to his student loan lenders. (AE A; Tr. 36, 39-40)

With a recent promotion and salary increase, expected reduction in his student loans due to the student loan forgiveness program, and his son's reaching the age of majority (freeing him from child support obligations), Applicant stressed his "new roadmap to how he can pay" his unresolved SOR debts. (AE E; Tr. 31, 58) His post-hearing submissions credited him with resolving his SOR ¶ 1.j debt with a prior payoff (\$5,647) and payment agreements with SOR creditors 1.d (agreed monthly payments of \$50 beginning in October 2022); 1.e (agreed monthly payments of \$150, beginning in September 2022); 1.f (agreed monthly payments of \$60, beginning in October 2022); 1.h (agreed monthly payments of \$55.49, beginning in October 2022); and 1.i (agreed monthly payments of \$142, beginning in September 2022). (AEs C and H-L)

Before the issuance of the initial decision in this case, Applicant documented his payoff of his SOR ¶ 1.j debt and payment agreements with five of his SOR creditors (SOR creditors ¶¶ 1.e-1.f and 1.h-1.i) His agreements were accompanied by scheduled first payments in compliance with the terms of the respective agreements. (AEs D-L) Each of his payment agreements were concluded after the hearing and involved agreed scheduled monthly payments to be honored by Applicant in the future and were accompanied by scheduled first due payments.

Still unresolved prior to the remand of this case were his listed debts with SOR creditors 1.a-1.c and 1.g. With these three creditors, Applicant had been unsuccessful in resolving his debt delinquencies before the completion of the initial hearing and post-hearing proceedings. (Tr. 59-60)

Since the remand, Applicant has continued to make his monthly payment in compliance with the payment schedule established for each of the debt delinquencies covered by SOR ¶¶ 1.d-1.f and 1.h-1.i. (AEs N-R) Applicant also documented his payoff of the debt covered by SOR ¶ 1.g with an \$8,500 payment. (AE M) Altogether, Applicant addressed all but three of the listed SOR debts (SOR ¶¶ 1.a-1.c). (AE E) These three unresolved debts total less than \$1,000 and do not materially detract from his overall good-faith efforts in resolving his delinquent accounts.

In his hearing, Applicant represented that he currently earns around \$100,000, and nets around \$5,000 a month. (Tr. 35-36) After allowing for monthly expenses, he

estimated a net monthly remainder of around \$1,000. (Tr. 35-36 62) With such a remainder, more good-faith payments on his delinquent accounts presumably can be reasonably expected. (Tr. 62-63) Applicant reported no savings account, but did claim a 401(k) retirement account with about \$120,000 in the account. (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 10 delinquent accounts. These debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial considerations guideline: DC ¶¶ 19(a), "inability to satisfy debts"; and 19(c), "a history of not meeting financial obligations." Each of these DCs are pertinent to Applicant's situation.

Applicant's 10 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). 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 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 child support garnishments, airport fines, student debt obligations, and other 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. Recognizing these added financial burdens on his keeping up with his debts, 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.

Two major consumer debts (SOR ¶¶ 1.g and 1.j) associated with Applicant’s SOR accounts have since been satisfied and resolved by Applicant with credited payoffs. For these paid off accounts, application of 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts” is applicable to Applicant’s financial situation.

In addressing his remaining debt delinquencies, Applicant has made considerable progress. Afforded hearing, post-hearing, and post-remand opportunities to address his still unresolved accounts, Applicant documented (a) five settlement agreements with SOR creditors ¶¶ 1.d-1.f and 1.h-1.i, along with accompanying initial monthly payments. In his post-remand submissions, he documented continuing monthly payments in compliance with his settlement agreements with SOR creditors 1.d-1.f and 1.h-1.i), along with a payoff of his SOR ¶ 1.g debt. With these additionally credited compliance payments with these creditors, along with his credited payoff of his SOR creditor 1.g debt, Applicant is entitled to favorable resolution of these SOR accounts.

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 able to demonstrate a sufficient tangible track record of actual debt reduction to satisfy Appeal Board guidance.

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, his explanations of the debts attributed to him in the SOR, and his substantial repayment initiatives, enough evidence has been presented to facilitate safe predictions of his ability to maintain responsible 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 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-1.j:

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