



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



In the matter of:)
)
-----) ISCR Case No. 21-01983
)
Applicant for Security Clearance)

Appearances

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

05/11/2023

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On February 1, 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 DCSA CAF 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 April 26, 2022, and requested a hearing. This case was assigned to me on December 20, 2022. A hearing was scheduled for March 10, 2023, via Microsoft 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 18 exhibits. The transcript (Tr.) was received on March 21, 2023.

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 additional pay summaries and updates on the status of his student loans. For good cause shown, Applicant was granted three days to supplement the record. Department Counsel was afforded three days to respond, Within the time permitted, Applicant furnished additional pay summaries. Applicant's submissions were admitted without objections as AEs S-V

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated nine delinquent Department of Education (DoE) student loans exceeding \$40,000 and two other federally guaranteed delinquent student loans exceeding \$53,000. Allegedly, Applicant's student loans remain unresolved and outstanding. In his response to the SOR, Applicant denied all of the allegations with explanations and clarifications. He claimed his loans were brought current in 2020 and remain in federal deferment.

Findings of Fact

Applicant is a 41-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 September 2007 and has two children from this marriage (ages 12 and 10). (GEs 1 and 3; Tr. 27) He and his wife briefly separated in April 2017 before reuniting in later in 2017. (Tr. 32) He earned a high school diploma in May 2003. Applicant earned an associate's degree in May 2014 and attended sufficient engineering classes between November 2014 and September 2016 to meet the requirements for an electronics engineering associate's degree before the college was shut down by the Government. (GE 1; Tr. 30) Applicant enlisted in the Marine Corps in September 2003 and served nine years of active duty before receiving an honorable discharge in April 2012. (GE 1)

Since March 2020, Applicant has been employed by his current employer as a ballistics technician. (GE 1; Tr. 29) He reported periods of unemployment between April

2012 and January 2016. (GE 1) Between December 2016 and June 2019, he worked for other employers as a maintenance technician. (GEs 1-2) He has held a security clearance since April 2004. (GE 1; Tr. 28)

Applicant's finances

Between 2018 and 2021, Applicant accumulated delinquent student loans exceeding \$93,000. (GEs 1-3; Tr. 23-30) He accrued these student loan deficiencies during recurrent periods of unemployment when he could not work. Applicant's student loan records document that his loans were in forbearance throughout the 2017 calendar year and early 2018. (Tr. 34) Once the forbearance was lifted in 2019, he was not financially able to address them. As a parent of an autistic child (their youngest), Applicant's wife could not work outside of the home. (Tr. 27) Compounding his financial difficulties in 2019, Applicant injured his foot (causing a stress fracture) and could not work for at least six months. (GE 3; Tr. 34) While unable to address his student loans for lack of monetary resources, Applicant's student loans were placed in collection status by the DoE. (Tr. 34) During his time away from work, he was treated for pulmonary issues. (GE 1 and AEs Q-R and X-Y)

Once Applicant returned to full-time employment in 2019, he made contact with his student loan lender and entered the lender's rehabilitation program. Applicant successfully completed his rehabilitation program. Records document that in May 2021, Applicant's rehabilitated student loans were returned to his servicing agent in December 2020 for administering and collection if necessary. (GE 2 and AE A Tr. 37) By White House Executive Order, Applicant's still outstanding student loans were placed in deferment status in December 2021, and are tentatively scheduled to be returned to active enforcement status October 2023. (Tr. 37) At this time, all but \$38,763 of his accrued delinquent student loans have been forgiven and discharged. (AE D; Tr. 37-38)

In December 2021, Applicant contracted COVID-19 and did not return to work until March 2022. (Tr. 24-25) For most of his COVID-19 absences, he received short-term disability payments while being treated for his COVID symptoms. Records document that Applicant was approved for short-term disability and missed over three months of work. (AEs Q-R and X-Y; Tr. 24-26) Because his treating physician declined to provide more medical information about his condition, he was denied any further financial assistance. (Tr. 24-26)

With his job promotion and salary increase (from \$26 to \$33 an hour), Applicant fully expects to be able to meet his student loan demands once the payment pause is expectedly lifted in October 2023. (Tr. 29, 38, 43-44) Since his recovery from COVID-19, he has returned to full time employment. (AEs F-N; Tr. 25) His remaining student loans are currently in good standing. While he has personal loans to repay (two from financial institutions exceeding \$16,000) along with advances from his brother and friends exceeding \$1,400. (Tr. 47-48) He remains confident that he will be able to fulfill these personal obligations and still meet the \$143 set monthly payments on his student loan debts when the pause is lifted. (Tr. 49) Applicant's payment assurances are both

credible and reasonable considering all of the circumstances surrounding his medical, family, and employment loss issues that he has experienced over the past ten years.

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 over Applicant's accumulated delinquent student loans following their emergence from forbearance in 2018. 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.

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 work-losses and family stresses affected his ability to address his student loans before they were placed in delinquent status, all of which played a major role in his accrual of his student loan delinquencies. While some of his loans were forgiven, others were rehabilitated and returned to current status before they were paused during the COVID 19 pandemic. These latter debts exceed \$38,000 and will become due and enforceable once the pause is lifted as expected in October 2023. Considering all of the circumstances surrounding Applicant's added financial burdens associated with his job loss and medical issues, 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," is applicable to Applicant's to situation.

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 associated with 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, the extenuating circumstances associated with job losses and family stresses, and the good faith he has shown in restoring his remaining student loans to current status, sufficient 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 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): AGAINST APPLICANT

Subparagraphs 1.a-1.k:

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