



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



In the matter of:)
)
-----) ISCR Case No. 22-01952
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/03/2023

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 July 11, 2022, 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 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 (undated), and she elected to have her case decided on the basis of the written record, in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on January 30, 2023, and interposed no objections to the materials in the FORM. She did not respond to the FORM. The case was assigned to me on April 11, 2023.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) petitioned for Chapter 13 bankruptcy relief in March 2020 (still ongoing); (b) petitioned for Chapter 13 bankruptcy relief in June 2012 (discharged in August 2017), (c) accumulated a delinquent medical account of \$94; and (d) had at least four cars repossessed since 2006.

In Applicant's response to the SOR, she admitted each of the allegations with explanations and clarifications. She claimed she filed her Chapter 13 petitions to consolidate her debts and facilitate her making smaller payments. She further claimed that while she "is not very good yet," at managing her finances, she has never dodged a bill. (Item 1)

Findings of Fact

Applicant is a 56-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in March 1989 and divorced in August 1997. (Item 2). She has two adult children from a prior relationship (ages 35 and 38). She remarried in August 1999 and divorced in September 2010. (Item 2). She remarried for the second time in February 2017. (Item 2) She has no children from either her second or current marriage. She earned a high school diploma in June 1985. She reported no military service. (Item 2)

Since June 2013, Applicant has been employed by her current employer as a quality inspector. (item 2) Previously, she worked for other employers in various technician jobs. She reported past periods of unemployment in 2011 and 2005. She has previously held a security clearance. (Item 2)

Applicant's finances

Between June 2012 and March 2020, Applicant twice petitioned for Chapter 13 bankruptcy relief (Items 2-9) She cited problems in paying her debts timely and claimed a corresponding need to find a way to consolidate her debts. Filing Chapter 13 petitions provided the legal opportunities to address her debts in legally sanctioned way, and she has chosen the Chapter 13 route to address and pay her debts. (Items 3-4)

In her 2012 Chapter 13 petition, Applicant claimed exempt property of \$8,300 and scheduled secured claims totaling \$60,083. (Item 8) Her secured claims consisted of a mobile home mortgage of \$49,415 and a secured auto loan totaling \$444. Assigning a value of only \$30,000 to the mobile home, she attributed \$19,415 of the loan to scheduled unsecured non-priority claims. (Item 8) She scheduled unsecured priority claims of \$888 and unsecured non-priority claims of \$9,859. Applicant received a bankruptcy discharge of her 2012 Chapter 13 bankruptcy petition in August 2017. (Item 8)

In March 2020, Applicant petitioned again for Chapter 13 bankruptcy relief. (Item 9) In this petition, she claimed exempt property of \$15,500 and scheduled secured claims of \$40,385. (Item 9) She scheduled unsecured non-priority claims of \$22,083. (Item 9) Her scheduled monthly payments to the Chapter 13 trustee are \$350 and are scheduled to continue for 60 months. (Item 9)

In her 2020 Chapter 13 petition, Applicant calculated her gross monthly income in 2020 to be \$4,338, and her monthly expenses to be \$2,945, which left her with a monthly remainder of \$350. (Item 9) For calendar year 2019, she reported her gross annual income to be \$44,292. (Item 9) Whether or not she has been able to keep up with her monthly payments cannot be determined without more financial information from Applicant.

Between 2006 and 2020, Applicant had four cars repossessed for failure to meet her scheduled monthly car payments, (Items 2-7) All but two of the deficiency balances associated with the repossessions were included in her Chapter 13 bankruptcy petitions. (Items 8-9) Besides her vehicle repossessions, Applicant accrued a delinquent medical account in the amount of \$94 that remains unresolved and outstanding. (Items

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 filing of two Chapter 13 petitions over an eight-year period between 2012 and 2020. Additional security concerns are raised over her accrual of a small medical account and the four vehicle repossessions she incurred between 2006 and 2020.

Financial concerns

Applicant’s two Chapter 13 petitions over an eight year period (with one still pending) and recurrent vehicle repossessions 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," apply to Applicant's situation

Applicant's admitted Chapter 13 petitions and vehicle repossessions (four in all) 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 delinquent debt accruals 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).

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 delinquent accounts is 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); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Without any documented evidence of Applicant's continued compliance with her approved 2020 Chapter 13 payment plan and more detailed information about the circumstances surrounding her vehicle repossessions, none of the potentially available mitigating conditions are available to Applicant at this time. In the past, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to tax, consumer, medical, or other debts and accounts. 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 her history of filing Chapter 13 bankruptcy petitions to address her debts while continuing to accrue vehicle repossessions are fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for her contributions to the defense industry, her efforts are not enough at this time to overcome her repeated failures or inability to address her debts and accounts (inclusive of her small medical debt covered by SOR i¶ 1.c) in a timely and prudent way over the course of many years. Overall trustworthiness, reliability, and good judgment have not been established.

Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake reasoned and timely good-faith efforts to mitigate the Government's financial concerns

within the foreseeable future. More time is needed for her to meet the requisite levels of stability with her finances to establish her overall eligibility 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.d:

Against 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