



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



In the matter of:)
)
) ISCR Case No. 22-00156
)
Applicant for Security Clearance)

Appearances

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

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 May 14, 2023, 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 DCSA 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 July 16, 2022, and requested a hearing. This case was assigned to me on January 25, 2023. A hearing was scheduled for April 27, 2023, via Microsoft Teams teleconference services, and was heard on the scheduled date. At the hearing, the Government's case consisted of eight exhibits. (GEs 1-8) Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on May 8, 2023.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated two delinquent student loan debts exceeding \$72,000, two delinquent medical debts exceeding \$900, and one delinquent consumer debt of \$59. Allegedly, these debts have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted all of the alleged SOR debts that were either charged off or in collection. He claimed his student loans payment obligations have been suspended by Federal mandate. He claimed he will pay off his delinquent medical and consumer debts by August 2022. Applicant also claimed that his household finances have improved and cited his wife's current employment and \$72,000 annual salary as a major factor. He further claimed that his monthly expenses have changed.

Findings of Fact

Applicant is a 43-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 December 2003 and has three children from this marriage (ages 17, 14, and 12). (GEs 1-2. He earned a bachelor's degree in May 2010 and reported no military service. (GEs 1-2; Tr. 18)

Since June 2015, Applicant has worked for his current employer as a business process expert. (GE 2; Tr. 18) Between 2011 and 2020, he held steady technician jobs with other employers. (GEs 1-2; Tr. 29) He has held a security clearance since October 2015. (GE 2; Tr. 27)

Applicant's finances

Applicant financed his college education with the aid of federally-guaranteed student loans he obtained from the U.S. Department of Education (DoE). (Tr. 19-20) He could not recollect ever making any payments on his student loans, and they became delinquent in 2009 and 2011. (GEs 3-8; Tr. 19-20) Applicant could not supply any dates as to when the loans first became delinquent between 2009 and 2011. (GEs 4-8; Tr. 21) After the loans became delinquent, Applicant's wages were garnished by the U.S. DoE in 2010 and 2011. (Tr. 21-22) Upon consolidating his student loans in August 2014, he

made no student loan payments and has not received anything from the DoE in a long time. (Tr. 15-16) To the best of his recollection, he has not made any student loan payments since he graduated from college in May 2010 and owes approximately \$83,000 in aggregate student loan debt. (GEs 6-8; Tr. 22, 24) Currently, his student loans are in the Government's forgiveness program, during which time enforcement of collections is suspended. (Tr. 16) While Applicant's DoE-guaranteed student loans are currently deferred, he has done nothing to rehabilitate his loans, either before or after his loans were placed in deferred status. (GEs 3-5) While income-based repayment plans with DOE were always an option for him to pursue with the DoE, he apparently never explored any payment options that could potentially accommodate his limited resources following his college graduation.

Assessing Applicant's delinquent medical and consumer accounts, he has made no documented progress in addressing any of these accounts. (GEs 4-8; Tr. 24-25) He attributed his failures to address his debts to treating them mostly "as out of sight, out of mind." (Tr. 25) In the past, he has generally relied on his wife to handle his finances and failed to properly monitor his accounts. (Tr. 25)

Applicant grosses \$86,000 annually in his new position and shares his monthly expenses with his wife who earns around \$75,000 a year in her new job. (Tr. 26-27) His monthly expenses include his mortgage, food, utilities, his wife's car loan, and monthly tithing to his church. (Tr. 26) Currently, Applicant and his wife are running a monthly deficit of \$4,000. (Tr. 27) They hold around \$4,500 in cash assets and a little more than \$10,000 in interest savings. (Tr. 27-28)

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 five delinquent debts (inclusive of two delinquent student loan accounts, two medical accounts, and one consumer account) exceeding \$73,000 in the aggregate. These collective debt delinquencies warrant the application of three of the disqualifying conditions (DC) of the financial considerations guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; 19(b), “unwillingness to satisfy debts regardless of the ability to do so”; and 19(c), “a history of not meeting financial obligations.” Each of these DCs apply to Applicant’s situation.

Applicant’s admitted delinquent debts with explanations 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 delinquent 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 explanations for his debt delinquencies are insufficient to warrant the application of any of the potentially available mitigating conditions. Enforcement suspension of Applicant's delinquent student loan debts (by far his largest delinquent accounts) does not mitigate the pre-suspension delinquent status of his loans, and he has made no documented efforts to rehabilitate his loans before the enforcement pause went into effect in 2020. Currently, he has no financial plan in place to aid him in mitigating the Government's financial concerns.

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.

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 as to why he has not been able to address his delinquent student loan and other debts to date, 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.e:

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