



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



In the matter of:)
)
-----) ISCR Case No. 22-01010
)
Applicant for Security Clearance)

Appearances

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

05/31/2023

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 June 13, 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 June 18, 2022, and requested a hearing. This case was assigned to me on January 25, 2023. A hearing was scheduled for March 13, 2023, via Microsoft Teams teleconference services, and was heard on the scheduled date. At the hearing, the Government's case consisted of six exhibits. (GEs 1-6) Applicant relied on one witness (himself) and six exhibits. The transcript (Tr.) was received on March 22, 2023.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated five delinquent consumer debts exceeding \$30,000. Allegedly, these debts have not been resolved.

In his response to the SOR, Applicant admitted all of the alleged SOR debts that were either charged off or in collection. He added explanations and clarifications. He claimed he has a one-income family and has had difficulty making ends meet with his high interest credit cards. He also claimed he has learned important lessons and has abandoned most of his credit cards, retaining only one credit card with a \$350 available credit limit.

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 2000 and has two adult children from this marriage (ages 17 and 22), both of whom reside with Applicant and his wife. (GE 1; Tr. 27-28) His spouse is a nurse by training (AE D) and is currently finishing up her course work required for her master's degree in nursing. (GE 1) Applicant attended a vocational training institute between March 2003 and March 2004 and earned a certificate of graduation in March 2004. (GE 1; Tr. 26) He reported no military service.

Since August 2020, Applicant has worked for his employer as a technician. (GE 1; Tr. 29) Between 2011 and 2020, he held steady technician jobs with other employers. (GE 1; Tr. 29) He has held a security clearance since March 2012. (GE 1; Tr. 27)

Applicant's finances

Between 2016 and 2020, Applicant accumulated five delinquent consumer accounts exceeding \$30,000. (GEs 2-6) Included SOR debts are as follows: 1.a a credit-card debt for \$11,505; (b) a credit-card debt for \$8,310; (c) a credit-card debt for \$6,656; (d) a credit card debt for \$2,455; and (e) a credit card debt for \$1,556. Together, these delinquent accounts exceed \$30,000 and have not been satisfied, or otherwise resolved to date. (GEs 2-6)

Applicant attributed his delinquent credit card accounts to his limited resources with his one-income family while his wife finishes her schooling. (GEs 1-2; Tr. 26-30) Having learned important lessons from his financial travails with his high interest credit cards, he currently only has one credit card at his personal disposal. And this card has a \$350 charging limit. (GEs 1-2) While his wife has been looking for work in her chosen nursing field, she has been unsuccessful to date and is concentrating on finishing her class work for her master's degree. (AE D); Tr. 30)

Asked about his own efforts to address his delinquent accounts, Applicant acknowledged his failure to make any inroads in addressing his delinquent balances since at least 2015. (GE 2; Tr. 35-36) Based on the legal advice he received from the three law firms he consulted with in 2018, he settled on a payment plan that deferred any addressing of his delinquent accounts until his debts were reduced to judgments and enforcement measures (inclusive of garnishment). (AEs A-C; Tr. 35-36) Preparing for that enforcement prospect, Applicant and his wife have been "putting whatever they can aside." (Tr. 36) When interviewed by an investigator from the Office of Personnel Management (OPM) in November 2021, he told the investigator then as well that he had made no attempts to address and resolve his delinquent balances. (GE 2)

Financial counselors he met with offered him limited advice that included his considering his letting his debts run their course to either creditor judgments or the expiration of governing statutes of limitation in his state of residence. (AEs A-C; Tr. 37-38) Currently, he has no financial plan in place to address and resolve his debt delinquencies. (Tr. 37-38) With the \$7,100 in gross income he earns monthly, he and his wife expend over \$6,800 a month in expenses (inclusive of his wife's education expenditures).

Applicant's breakdown of his monthly income and expenses leaves him with a little over \$200 a month in discretionary income to address his debts. (Tr. 32) His cumulative savings of \$6,400 does not afford him any additional resources to make any serious inroads in addressing his debts. (Tr. 36-37) He and his wife are current in their lease payments. (AE E)

Endorsements

Applicant is highly regarded by a past bishop of his church, who found Applicant to be of quiet reserve, kind, respectful, and of good character. (AE F) This past bishop did not indicate any personal knowledge of Applicant's finances or financial issues raised in the SOR. (AE F)

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 consumer accounts, exceeding \$30,000. These debt delinquencies warrant the application of two of the disqualifying conditions (DC) of the financial considerations 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 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 limited resources as a one-income family played some role in his accrual of so many delinquent debts over the past few years. Considering these added financial burdens, 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. However, with his steady work over the past 10 years, he could be reasonably expected to make more progress in addressing his delinquent accounts.

Financial advice offered by the lawyers Applicant has consulted does not enable him to avert responsibility for addressing his debts with voluntary, good-faith payments of his creditors holding delinquent accounts. Deferring to creditors to pursue enforcement measures or relying on controlling statutes of limitation in his state of residence to render the debts unenforceable do not represent the kind of voluntary,

good-faith efforts required to mitigate financial concerns. Currently, Applicant 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. 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 as to why he has not been able to address his delinquent accounts 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