



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



In the matter of:)
)
-----) ISCR Case No. 22-00377
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

07/07/2023

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 April 19, 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 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 (undated), and requested a hearing. This case was assigned to me on December 20, 2022. A hearing was scheduled for May 25, 2023 via Microsoft Teams teleconference services, and was heard on the scheduled date. At the hearing, the Government's case consisted of three exhibits. (GEs 1-3) Applicant relied on one witness (himself) and two exhibits (AEs A-B). The transcript (Tr.) was received on June 5, 2023.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to afford him the opportunity to supplement the record with character references. For good cause shown, Applicant was granted seven calendar days to supplement the record with a written budget. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with character references and a brief budget. Applicant's post-hearing submissions were admitted as AEs C-D.

Prior to closing the record, Department Counsel moved to amend the SOR to change the reported amount owing to SOR creditor ¶ 1.c from \$16,309 to \$10,455 to conform to the evidence. The motion was granted without objection.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated two delinquent student loan debts exceeding \$36,000 and five delinquent consumer and medical debts exceeding \$24,000. 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 and added explanations and clarifications. He claimed he had worked with a debt consolidation service that did nothing for him but allow his debts to become delinquent. He claimed he was involved in an accident where he was fault free but was unable to obtain reimbursement of his medical bills from the other driver's insurance carrier. He claimed that he either has or will be making payment arrangements with his other listed creditors.

Findings of Fact

Applicant is a 62-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 August 1982 and has two adult children (ages 27 and 24) from this marriage. (GE 1; Tr. 38) He earned an associate's degree in May 1993 and attended some additional college classes. (GE 1; Tr. 39-40) He reported no military service. (GE 1)

Since February 2007, Applicant has worked for his current employer as a database administrator. (GE 1; Tr. 38) He held part-time positions between January 2007 and January 2012. (GE 1) Applicant has held a security clearance since May 2010. (GE 1)

Applicant's finances

Applicant financed his college education with the aid of a federally-guaranteed student loan in 1993 for approximately \$17,000. (GEs 2-3; Tr;. 41, 63-64) By 2009, he had paid down his student loan to around \$9,000. (Tr. 41) As the result of either refinancing or added interest, the account was reported in May 2022 to have a high balance of \$13,657 and a delinquent balance of \$10,455. (GE 3) Applicant has not made any additional payments on his personal education loan since November 2019, and the account remains in collection status with interest continuing to accrue. (GEs 2-3; Tr, 63-64)

Credit reports confirm that in August 2017 Applicant took out a 36-month parent student loan for his son's college education in the amount \$17,760. (GEs 2-3; Tr. 56-56, 63-64) He took out this parent loan in his own name without any co-signature from his son. Since 2017, he has not made any payments on this parent loan, and credit reports confirm that the account is in collection status with \$20,627 owing on the cumulative balance as of May 2022. (GEs 2-3; Tr. 42)

Currently, both of Applicant's student loans are in pause status. (Tr. 58-59) And, while the loans have been in pause status, Applicant has been exempt from making payments on either loan. (Tr. 58-59), However, the pause does not change the delinquent condition of the loans, but only suspends any payment enforcement while the pause remains in effect. And, despite promises to do so, Applicant has not provided any documentation of a payment plan or budget as to how he will rehabilitate his loans once the pause is lifted. (Tr. 45)

Besides his student loan debts, Applicant is indebted to five consumer creditors for delinquent accounts exceeding \$24,000. (GEs 2-3) He accrued these debt delinquencies between 2013 and 2018. (GEs 2-3) Applicant attributed his debt delinquencies to recurrent medical bills associated with a serious car accident he experienced in 2015. (Tr. 42-43)

Estimated medical expenses associated with his accident exceeded \$100,000. (Tr. 44) Most of the bills (70 to 80 per cent) were covered by his medical insurance. (Tr. 44) Applicant's incurred hospital co-pays and other medical bills he accrued to address his injuries from he accident exceeded \$22,000. (AE F; Tr. 42-44)

In 2018, Applicant retained a debt consolidation agency for about a year to help him resolve his debts, (Tr. 48) Making no discernible progress with this agency, he terminated their services and withdrew his escrowed funds of approximately \$5,000. (Tr. 48-49) With the returned funds, he paid off some small medical bills. (Tr. 48-49) Except for his payoff of his SOR ¶ 1.f debt (\$1,960), he has not addressed any of his remaining

delinquent consumer accounts and medical debt with the current resources available to him. (GEs 2-3 and AE A, Tr. 45-47)

Applicant currently makes \$148,000 a year (inclusive of annual bonuses that typically range between one and three percent). Broken down, Applicant nets around \$8,000 monthly in take home pay. (Tr. 38-39 49-51) His monthly expenses generally run close to \$5,000 (inclusive of medical expenses). (Tr. 51-52) His 401(k) retirement fund currently has about \$100 in the account. (Tr. 40) Because his wife does not work, he has only his own financial resources to cover his bills and other expenses. (Tr. 40)

After accounting for his monthly expenses (inclusive of his medical co-pays that run between \$200 and \$300 for himself and \$200 for his wife), Applicant retains a monthly remainder of close to \$3,000. (AE F; Tr. 40, 53-55) Committing to taking care of his bills, he documented a very limited payment plan and budget to support his ability to do so. (AE D; Tr. 37-38, 60-61)

Character references

Applicant is highly regarded by his friend and his team lead. (AE D; Tr. 20-21, and 29-36) They credit Applicant with being dependable, responsible, and trustworthy. Aware of his financial issues, his team lead cited the advice she gave him on addressing his medical bills and how to rectify his financial situation. (AE D; Tr. 21) While unfamiliar with all of Applicant's debts, she knew most of the details of his medical bills and how they affected his ability to address his other debts. (AE D; Tr. 22)

A former co-worker who worked with Applicant on a number of projects, credited him with being very dependable in their working relationships. (AE D; Tr. 33) This reference is a retired military service member who has held a security clearance since 2005 (Tr. 33-34), but who has no specific knowledge of Applicant's financial issues. (AE D; Tr. 33-35)

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 seven delinquent debts (inclusive of two delinquent student loans, four consumer accounts, and one medical debt) exceeding \$60,000 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 the specific facts of 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 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).

Applicant's cited explanations for his debt delinquencies (primarily due to prioritized medical debts) 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 made no documented efforts to rehabilitate his loans before the enforcement pause went into effect in 2020.

Currently, Applicant has no well-developed financial plan or refined budget in place to aid him in mitigating the Government's financial concerns over his delinquent student loans. And, with the exception of the consumer debt covered by SOR ¶ 1.f (which he has resolved), he has made no concerted efforts to resolve any of his delinquent consumer and medical debts with the ample resources available to him over the past three years.

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 and 1.g:	Against Applicant
Subparagraph 1.f:	For 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