



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



In the matter of:)
)
-----) ISCR Case No. 22-02258
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq. Department Counsel
For Applicant: *Pro se*

09/11/2023

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 November 10, 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.

This case was assigned to me on May 3, 2023. A hearing was scheduled for June 23, 2023, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of five exhibits. (GEs 1-5) Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on July 7, 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 updates on his student loan payment plan and other debts covered by the SOR. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with his divorce file (inclusive of a final decree of divorce, a petition to modify his child support payments, and Applicant's counter-petition and child support order), along with a drug testing certificate regarding his ex-wife, a payment plan covering the SOR ¶ 1.f debt, a billing statement covering the SOR ¶ 1.h debt; a performance evaluation; a forbearance statement confirming a pause in applicant's student loan accounts; a March 2022 confirmation of Applicant's payments to his divorce attorney (undated); and a conferment alcohol disorder with respect to ex-spouse. Applicant's post-hearing submissions were admitted without objections AEs A- I.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated five delinquent DoE student loan debts exceeding \$35,000 and four delinquent consumer debts exceeding \$2,900. Allegedly, these debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted most of the allegations with explanations and clarifications. He denied the allegations covered by SOR ¶¶ 1.f-1.g and 1.i. For explanations covering his admitted debts, he claimed his 2020 divorce and related financial hardships (inclusive of his furnished care of his father-in-law who was involved in a serious auto accident in May 2018 and eventually passed away) before his separation, and ultimate divorce. Applicant further claimed that he has been a single dad with full custody of his children since October 2020 and minimal help from his ex-wife.

Findings of Fact

Applicant is a 31-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 April 2018, separated the same year, and divorced in October 2020. (GEs 1 and 5 and AEs A and D; Tr. 27) He has two children from this marriage (ages one and two). GE 1; Tr. 53) He earned a bachelor's degree in May 2014 and a master's degree in May 2016. (GEs 1; Tr. 39, 41) He reported no military service.

Since August 2019, Applicant has worked for his current employer as a manufacturing engineer. (GE 1; Tr. 49) Between May 2014 and September 2020, he worked in various jobs for non-DoD employers. (GE 1) He has never held a security clearance. (GE 1)

Applicant's finances

Between 2015 and 2017, Applicant took out federal and state student loans to finance his undergraduate and graduate education. (GEs 1-5 and AEs A-B and D-E; Tr. 29) Burdened by child support and other financial obligations from his marriage, Applicant never made any payments on his student loans. (GEs 1-5; Tr. 29-30) After receiving billing notices from the DoE in 2017 and 2018, he asked for extensions before putting his student loans aside without addressing them. (GE 5; Tr. 31) In 2022, Applicant received a letter notice from the DoE approving him for rehabilitation status. (AE D; Tr. 32) Because of the COVID-19 pause in place at the time, the DoE did not require upfront loan payments from Applicant. (AE D; Tr. 32)

Applicant assured that he would be able to make his payments when they become due after the pause is lifted in September 2023. (AEs D and G; Tr. 33) Applicant's assurances are both plausible and credible, considering all of the extenuating circumstances associated with his divorce, pre-divorce family care, and child-rearing responsibilities he has assumed as a single parent, and are accepted.

Other delinquent debts accumulated by Applicant between 2016 and 2018 are comprised of four consumer debts as follows: SOR ¶¶ 1.f (for \$639); 1.g (for \$463); 1.h (for \$1,052); and 1.i (for \$921). (GEs 2-5; Tr. 33-48) These debts exceed \$2,900 Applicant continues to dispute two of the debts, claiming identification theft with respect to SOR ¶ 1.f and a lack of familiarity with the debt covered by SOR ¶ 1.g. (GEs 3-5; Tr. 35-36) He documented a payment plan with SOR ¶ 1.h that calls for monthly payments of \$50 a month beginning in June 2023 (AE H; Tr. 37-38), and unsuccessful efforts to make contact with SOR creditor ¶ 1.i (Tr. 37-38 and 41-42)

Applicant's divorce and resulting single-parent responsibilities have been difficult and costly for him. While drug tests administered to his ex-wife produced negative results for marijuana and other illegal drugs (AE E), his ex-wife has been unable to meet all of her child support payment obligations due to periods of unemployment. (Tr. 42) When able, she contributes \$900 a month for child support and splits the monthly costs of medication for their children. (Tr. 42-43)

Applicant nets \$3,300 a month and expends in excess of \$2,500 a month on rent, utilities, transportation, child-care, and food expenses. (AE I; Tr. 43-45) He estimated a modest monthly remainder to cover discretionary expenditures. (Tr. 45) He maintains small savings and checking accounts and has a 401(k)-retirement account with an estimated \$42,000 balance. (Tr. 45) With his solid performance ratings, he looks to receive promotions and raises in the future with his current employer. (AE J)

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 DoE student loans (exceeding \$35,000) that he originated to finance his undergraduate and graduate education. Additional security concerns are raised over delinquent consumer debts (exceeding \$2,900). Applicant's 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 extenuating circumstances associated with his single-parenting responsibilities contributed materially to his delays in addressing his matured student loans in 2018. Applicant has since been approved for rehabilitation of his student loans and is on schedule to make his first scheduled payments once the federal pause is lifted. While Applicant's remaining four SOR-listed debts (all consumer-related) exceeding \$2,900) have not all been resolved, one of them (SOR ¶ 1.h) is covered by a repayment plan and is favorably resolved. Applicant could not identify the remaining three consumer debts as debts belonging to him. Totaling no more than \$1,900, these three debts are favorably resolved as well.

Applicable mitigating conditions (MC) include 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,” and 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.”

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, his extenuating circumstances associated with his single-parenting responsibilities following his difficult 2020 divorce, the good faith he has shown in restoring his delinquent student loans to current status under the DoE’s rehabilitation program, and his overall efforts in identifying and addressing his remaining consumer debts. Applicant is credited with making considerable progress in resolving his debts.

Considered together, Applicant has shown sufficient responsibility in managing his finances to enable him to maintain sufficient control of his finances to meet minimum standards for holding a security clearance. Extenuating and mitigating credit are considerable in Applicant’s case.

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 fully 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): FOR APPLICANT

Subparagraphs 1.a-1.i:

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