



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



In the matter of:)
)
-----) ISCR Case No. 22-02210
)
Applicant for Security Clearance)

Appearances

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

12/13/2023

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 January 11, 2023, 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.

Applicant responded to the SOR on October 29, 2022, and requested a hearing. This case was assigned to me on June 6, 2023. A hearing was scheduled for September 19, 2023, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of eight exhibits. (GEs 1-8) Applicant relied on one witness (herself) and ten exhibits. (AEs A-J). The transcript (Tr.) was received on September 28, 2023.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with updates on her payments to her creditors and the status of her student loans with the Department of Education (DoE). For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded one day to respond.

Within the time permitted, Applicant supplemented the record with a documented payoff of one SOR creditor, a summary of creditors she has contacted post-hearing, endorsements from her supervisor and co-worker, a post-hearing letter submission, and payment arrangements she has made with her DoE student loan creditor. Applicant's submissions were admitted without objections as AEs K-P.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated 16 delinquent federally guaranteed student loans exceeding \$160,000, along with 12 consumer debts exceeding \$15,000 and medical debts exceeding \$4,500. Allegedly, her delinquent accounts have not been resolved and remain outstanding.

In her response to the SOR, Applicant admitted all of her student loan debts (SOR ¶¶ 1.a-1.e, 1.g-1.p 1.s-1.t). with explanations. She denied the allegations covering SOR ¶¶ 1.f, 1-r, 1.v-1.x, 1.aa-1.bb, and 1.dd-1.hh with explanations. Applicant further claimed major medical issues associated with her mother, grandmother, and stepfather, all of which negatively impacted her finances.

Findings of Fact

Applicant is a 52-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 never married and has no children. (GE 1; Tr. 47) She earned a bachelor's degree in 2007. (GE 1; Tr. 59) Between 2013 and 2014, she attended post-graduate classes, but did not earn a degree or diploma. (Tr. 52-54) Applicant enlisted in the Inactive Reserve of her state's Army National Guard in June 1996 and served over 16 years of duty before receiving an honorable discharge in March 2013. (GE 10 She

reenlisted in her state's Army National Guard's Inactive Reserve in September 2017 and served six months of duty before receiving an honorable discharge in March 2018. (GE 1; Tr. 47)

Since September 2018, Applicant has been employed as a cyber security analyst. (GE 1; Tr. 44) She reported recurrent unemployment between February 2013 and August 2018. She held a security clearance during her first Army National Guard enlistment. (GE 1) However, her clearance was revoked by the Army in 2012 due to security concerns over her finances attributable to unstable employment issues. (GE 2; Tr. 48)

Applicant's finances

Between 2002 and 2014, Applicant took out federal student loans to finance her undergraduate education. (GEs 1-8) All of the loans were individual loans without any co-signors. (GEs 4-8) Due to recurrent problems in finding employment, she encountered difficulties in paying her delinquent student loans and other debts. (Tr. 49) Credit reports document that her student accounts remained in collection status before 2023. (GEs 4-6). She filed applications for forbearance over the course of her loans to lighten the interest accruals on the loans and received some forbearance relief between 2011 and 2013. (Tr. 60-62) Since her student loans became delinquent in 2018, she has not received any confirmations of additional forbearance relief. (GE 7; Tr. 60)

In April 2023, Applicant applied for and was accepted in the DoE's fresh start program. (AEs G-H and J; Tr. 60) Payments on her newly consolidated student loans (consolidated as a part of her fresh start acceptance) are scheduled to commence in March 2024. (AE P; Tr.40-42, 61, 63-64) Payment terms call for monthly payments on the balance of her loans of \$1,744. (AE P). She hopes to be able to fit her student loan repayment obligations into her budget that also includes monthly financial support to her family and friends. (Tr. 60-62)

Applicant has been making \$200 monthly payments on her student loans in the interim before her fresh start loan payment obligations vest in 2024. (Tr. 64-65) Whether she will have sufficient resources to follow through with her much more substantial consolidated loan payments scheduled to commence in March 2024 is unclear and cannot be reliably anticipated at this time without a more positive track record.

Besides her student loans, Applicant accumulated 12 delinquent consumer debts exceeding \$15,000 and four medical debts exceeding \$4,500. (GEs 4-8) She has made only limited contacts with her creditors since her accounts were opened. And, she has made only a few scattered payments on these accounts. (AEs C-K; Tr. 68-74)

Recently, Applicant entered into payment plans with SOR creditors 1.q (a \$1,515 consumer account) and 1.z (a \$252 consumer account), but provided no material payment progress on these plans. (AEs F and C; Tr. 68-75) She is credited with paying off two accounts: SOR ¶¶ 1.y (for \$389) and 1.bb (for \$479). (AEs D-E and G-H; Tr. 68-74)

Asked at hearing about the current status of the car loan she opened in 2010 for \$16,210, she offered contradictory responses from the creditor and its assignees holding the loan (Tr. 68-74). In her post-hearing submissions, she documented a payoff (undated) of this loan in 2014. (AEs K-L) Whether Applicant paid off this loan or the loan was assigned to another creditor is unclear. Her most recent credit report of September 2023 only verified the opening of the loan account in 2010 for \$16,210 and her refinancing of the loan in 2014. (GE 8) Nothing more is known about the current status of this loan or how the previously reported charge off of the loan has been resolved. (GEs 3-4) Without documented payments from Applicant of the reported \$8,632 balance or other clarifying information from Applicant, her SOR ¶ 1.f debt cannot be favorably resolved.

Applicant continues to dispute several debts. These disputed debts are reported as delinquent accounts covered as follows: SOR ¶¶ 1.v (for \$1,022), 1.w (for \$699) and 1.x (for \$392). She cited her return of the equipment she purchased and returned to the creditors as the basis of her disputes with them. Efforts to have these debts removed from her credit reports have not been successful. (AEs-i Tr. 77-83) Without more information and documentation to corroborate her disputes of these debts, they cannot be favorably resolved.

Four remaining debts that are covered in Applicant's credit reports are medical debts identified in SOR ¶¶ 1.ff (for \$1,217), 1.ffi (for \$1,217), 1.gg (for \$1,110), and 1.hh (for \$214). Asked about these debts, Applicant replied that she believed they were covered by insurance and would check up on these debts. (GEs 4-5; Tr. 83-86) Her post-hearing submissions provide no additional clarification of these medical debts, and they remain unresolved without any evidentiary basis for favorably resolving them.

Applicant's cited financial counseling is limited and lacking in details and follow-up with her financial counselor. (AE B; Tr. 67) What lessons Applicant learned from her meetings with the counselor are unclear. Her counseling sessions with the counselor are lacking in substance and details of the subjects covered. (Tr. 67)

Applicant currently nets \$4,600 a month from her work and has supplemented her income this past year with additional part-time work. (AE I; Tr. 44-45) She reported monthly living expenses exceeding \$1,200. (Tr. 90-91) She has a checking account with a modest average monthly balance of around \$2,300 and a small savings account, but she has few other sources of income. (Tr. 93) or other sources of income. (Tr. 88-91) She attributed her income shortages to spreading herself too thin by helping her friends and family financially. (GE 7; Tr. 88-89)

Endorsements

Applicant is well-regarded by her manager and co-worker. (AEs M and O) Her former coworker and current manager credited her with being a top performer who always gives her best effort in completing the challenges assigned to her. (AE M) Neither her references expressed any awareness of her current financial situation.

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 12 delinquent DoE student loans (exceeding \$160,000) between 2002 and 2014 to finance her undergraduate education. Additional concerns about her finances relate to the delinquent consumer and medical debts that for the most part have not been resolved. These 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 cited reliance on her insufficient resources to cover the financial assistance she provides friends and family members and still satisfy her own accumulated student loans and other debts. To date, she has managed to make a few scattered payments on several consumer accounts, establish payment plans with a few of her creditors, and pay off two small accounts. By far, her largest debt delinquencies are covered by her 12 delinquent student loan accounts that have since been consolidated under Applicant’s DoE administered fresh start program. Calculated monthly payments of \$1,744 on her consolidated loans become due in March 2024 and are expected to be challenging for her on her current budget.

Partially 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”; 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debt”; and 20(c), “the individual has received or is receiving financial

counseling for the problem from a legitimate and credible source, such as a non-profit cred counseling service, and there are clear indications that the problem is being resolved or is under control.”

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).

Well-intentioned promises, while encouraging, cannot be substituted for a voluntary, good faith track record of payments. Based on the evidence presented, Applicant is not able to demonstrate a sufficient tangible payment history of actual debt reduction to satisfy Appeal Board guidance associated with the good-faith and responsible payment requirements of MC ¶¶ 20(b) and MC 20(d). And, with only brief undetailed counseling sessions with her financial counselor, very limited credit can be assigned to her counseling initiatives.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether her finances are fully compatible with minimum standards for holding a clearance. Applicant’s problems in managing her finances have been longstanding and slow to abate. Taking into account her credited defense contributions, her extenuating circumstances associated with her recurrent periods of unemployment and split financial responsibilities with her friends and family members, she has shown some encouraging progress in addressing her debts and regaining control of her finances.

With over \$160,000 owed on her student loans and heavy payment responsibilities facing her in early 2024, her repayment initiatives promise, however, to be tested with still uncertain payment outcomes. Without a better track record of good-faith, responsible payment initiatives pre-dating the issuance of the SOR, her efforts to date fall short of the level of financial responsibility required to demonstrate responsible regain control of her finances.

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.x; 1.z-1-ee, 1.gg-1.hh: Against Applicant
Subparagraphs 1.y and 1.ff: 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 granted.

Roger C. Wesley
Administrative Judge