



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



In the matter of:)
)
-----) ISCR Case No. 22-01380
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath Esq., Department Counsel
For Applicant: *Pro se*

12/18/2023

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 August 19, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Services (CAS), successor to the Department of (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAS 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 May 3, 2023, and requested a hearing. This case was assigned to me on May 3, 2023. A hearing was scheduled for August 29, 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 (himself) and three exhibits (AEs A-C). The transcript (Tr.) was received on September 12, 2023.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated nine delinquent debts exceeding \$25,000. Allegedly, Applicant's delinquent debts remain unresolved and outstanding.

In his response to the SOR, Applicant admitted most of the allegations, denying only the allegations covered by SOR ¶¶ 1.a, 1.e, and 1.h-1.i. He claimed he was sued by the creditor associated with SOR ¶¶ 1.a and 1.e and received dismissals in both cases for lack of supporting contract documentation. He claimed disputes over SOR ¶¶ 1.h and 1.i for lack of recognition. For those admitted allegations covered by SOR ¶¶ 1.b and 1.d, he claimed settlement agreements were reached with the respective creditors.

Findings of Fact

Applicant is a 38-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 June 2008 and has one daughter (age 13) from this marriage. (GE 1) He earned a high school diploma in June 2004, an associates degree in August 2013, and a bachelor's degree in business administration in August 2016. (GE 1) He enlisted in the Army in May 2005 and served four years of active duty before receiving an honorable discharge in May 2009. (GE 1)

Since October 2009, Applicant has been employed by his current employer as a subcontract manager. (GE 1; Tr. 28-29) He has held a security clearance since February 2012. (GE 1; Tr. 30)

Applicant's finances

Between 2017 and 2022, Applicant accumulated a number of delinquent accounts (nine in all) exceeding \$25,000 in the aggregate. The SOR-listed debts are

comprised of the following: SOR ¶¶ 1.a (an individual investment account opened in June 2017 and reported delinquent in May 2022 for \$12,064); 1.b (an individual furniture account opened in June 2017 and reported delinquent in April 2021 for \$3,457); 1.c (an individual consumer account opened in January 2010 and reported delinquent in March 2017 for \$2,377); 1.d (an individual consumer account opened in 2016 and reported delinquent in April 2017 for \$2,569); 1.e (an individual consumer account opened in January 2018 and reported delinquent in May 2018 for \$2,377); 1.f (an individual consumer account opened in September 2016 and reported delinquent in April 2017 for \$1,184); 1.g (an individual consumer account opened in October 2016 and reported delinquent in June 2017 for \$989); 1.h (an individual medical account opened in January 2017 and reported delinquent in January 2019 for \$166); and 1.i (an individual medical account opened in January 2017 and reported delinquent in May 2017 for \$166).

Applicant attributed his debt delinquencies to a combination of poor financial management on his part and significant medical expenses associated with his young son's birth-related kidney and liver medical complications. (GE 8; Tr. 25-26) Child emergencies depleted his family's savings and contributed to the disarray of his finances and resulting delinquencies in his accounts. (Tr. 27-28)

All of Applicant's cited consumer accounts remain delinquent and unaddressed at this time, the result of either unsuccessful creditor enforcement action (SOR ¶ 1.a) or Applicant's failure to devote sufficient attention to his listed-SOR debts (i.e., SOR ¶¶ 1.b-1.g). (GEs 4-7) To help him in addressing his delinquent accounts and clear them from his credit report, he pursued debt consolidation and credit repair in 2017. (Tr. 42) After several months of working with the credit repair firm without any tangible results, he ceased using the firm. (Tr. 42-43) Applicant currently has no documented plans to address and pay off his SOR-listed creditors. (Tr. 53-61)

Applicant earns \$93,400 annually in base salary and earns additional overtime hours (10 to 12) monthly. (Tr. 30) After taxes, he nets approximately \$6,400 a month from his work. And, he receives an additional \$820 a month in disability benefits from the Veterans Administration (VA). (Tr. 30-31)

Contributing to his monthly income is his wife who, although not currently employed, receives \$17,500 a month in disability benefits. (Tr. 32) Applicant currently has \$3,230 in his checking account and \$40,000 in a savings account. (Tr. 33) He also has a modest 401(k) retirement account. (Tr. 33-34)

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. Both need to be considered together in making a comprehensive whole-person evaluation.

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 nine delinquent debts exceeding \$25,000. 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’s cited medical issues associated with his young son’s medical complications contributed considerably to his accumulated debt delinquencies. His delinquent debts (opened individually by Applicant) accrued during his marriage reflect some extenuating circumstances beyond his ability to manage and control. Considering all of the circumstances surrounding Applicant’s 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,” is partially applicable to Applicant’s situation.

Applicant’s failure to address his delinquent accounts once the issues associated with his son’s medical complications stabilized and he had regained his financial footing, prevented him from taking advantage of the full benefits of MC ¶20(b). Because he has not demonstrated enough diligent exercise of financial responsibility while dealing with his son’s medical issues, he is not in a position to take full advantage of the second prong of MC ¶ 20(b), “acted responsibly under the circumstances.” Without more demonstrated effort in addressing his major debts, Applicant cannot meet the minimum eligibility requirements for holding a security clearance.

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 unable 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, the extenuating circumstances associated with the financial costs of caring for his young son's medical issues, and his own acknowledged judgment lapses in managing his finances, 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.i:

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