



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



In the matter of:)
-----) ISCR Case No. 22-01183
Applicant for Security Clearance)

Appearances

For Government: Dan O'Reilley, Esq., Department Counsel
For Applicant: *Pro se*

01/09/2024

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On September 22, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) 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); Department of 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 December 5, 2022, and requested that her case be resolved on the written record without a hearing. Applicant received the FORM on August 9, 2023, and she did not respond with any objections to the FORM or provide new submissions. This case was assigned to me on November 9, 2023. The Government's case consisted of six exhibits. The Government's exhibits were admitted as Items 1-6.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to timely file her federal and state tax income tax returns, as required, for tax years 2013 through 2014; (b) is indebted to the Federal Government in the approximate amount of \$7,000 for tax years 2013 and 2014; and (c) accumulated 16 delinquent debts exceeding \$6,000. Allegedly, Applicant's delinquent debts have not been resolved and remain outstanding.

In Applicant's response to the SOR, she admitted all of the alleged tax-filing lapses and delinquent debts with explanations. She claimed she could not afford to pay the debts covered by SOR ¶ 1.c. She further claimed that the remaining debts listed in the SOR (SOR ¶¶ 1.d-1.s) either remain delinquent (SOR ¶ 1.h and 1.s) or have been removed from her credit report.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in July 2017 and has three stepchildren (ages 23, 15, and 12) and one biological child, age seven. (Item 1) She earned a high school diploma in June 2004. (Item 1) She reported no military service. (Items 2-3)

Since June 2018, Applicant has been employed by her current employer as a technical order librarian. (GE 1) Previously, she worked for other employers in various jobs. She first received a security clearance in 2011. (Item 1)

Applicant's finances

Records document that Applicant did not timely file her federal and state tax returns, as required, for tax years 2012 and 2013. (Items 2-7) Applicant attributed her tax-filing lapses and debt delinquencies to an illness incurred during pregnancy in 2015 and a custody dispute with her husband's ex-spouse. Whether she ever filed federal and state tax returns and paid any taxes owed for the specified years in question is not documented by Applicant.

In her security clearance application (e-QIP) of December 2020, Applicant disclosed her failures to file or pay or Federal and State income taxes for tax years 2013 and 2014. (Item 3) In her ensuing interview with an investigator from the Office of Personnel Management (OPM), she told the investigator that she owed approximately \$7,000 to the Internal Revenue Service (IRS). (Item 5) To date, she has failed to document either the filing of her delinquent federal and state tax returns or satisfy any amounts owing the Federal Government for the two years in issue. Explanations of the circumstances of her failure to file timely Federal and State tax returns for the years in question are limited to her expressed difficulties in dealing with her finances.

Besides her tax-filing lapses, Applicant accumulated 17 delinquent accounts exceeding \$6,000. (Items 3-5) the individual amounts of the debts are relatively small (none exceeding \$500), and most of them, according to Applicant, have been removed from her credit report. (Items 2 and 5) Still, Applicant to date has not addressed his delinquent debts in any tangible way or documented the reasons for their removal from her credit report.

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 failure to timely file her federal and state income tax returns for tax years 2013-2014 and her failure to pay the estimated \$7,000 in back federal taxes owed the federal Government for these years. Additional security concerns are raised over Applicant’s accumulated delinquent debts that exceed \$6,000. Applicant’s filing lapses and accumulated delinquent accounts raise trust, reliability, and judgment concerns about her current and future ability to manage her finances safely and responsibly.

Financial concerns

Applicant’s multiple tax-filing lapses and accumulated delinquent debts warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), inability to satisfy debts”; 19(c), “a history of not meeting financial obligations”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns, or failure to pay annual Federal, state, or local income tax as required,” apply to Applicant’s situation.

Applicant’s admitted tax-filing lapses and unresolved debt delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). Her admitted tax-filing lapses debt

delinquencies are fully documented and create judgment issues over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004).

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 tax-filing and payment 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); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Without any documented evidence of her timely-filed tax returns, or good cause demonstrated for any untimely filing of her tax returns for tax years 2013 and 2014, none of the potentially available mitigating conditions are available to Applicant. In the past, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to back taxes or other debts and accounts. 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).

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of multiple tax-filing and payment lapses and accumulated delinquent accounts are fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for her work in the defense industry, her efforts are not enough at this time to overcome her repeated failures or inability to address her tax-filing and payment responsibilities in a timely way over the course of many years. Overall trustworthiness, reliability, and good judgment have not been established.

Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake reasoned, good-faith efforts to mitigate the Government's financial concerns within the foreseeable future. More time is needed for her to establish the requisite levels of stability with her finances to establish her overall eligibility 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.s:	Against Applicant
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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