



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



In the matter of:)
)
) ISCR Case No. 22-01741
)
Applicant for security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2024

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On October 26, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Service (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations and personal conduct guidelines 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 Defense (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 April 19, 2023, and requested a hearing. This case was assigned to me on October 24, 2023. A hearing was scheduled for January 24, 2024, and was heard on the scheduled date. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on one witness (herself) and no exhibits. The transcript (Tr.) was received on February 2, 2024.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 14 delinquent debts exceeding \$24,000. Allegedly, Applicant's delinquent debts remain unresolved and outstanding.

Under Guideline E, Applicant allegedly (a) falsified her electronic questionnaires of investigations processing (e-QIPs) of December 31, 2021 and February 11, 2018, respectively, by omitting her delinquent debts covered by Guideline F, *supra*; (b) was suspended by her Government employer for 14 days in June 2021 due to multiple complaints about her behavior from supervisors, co-workers, and passengers; (c) is not eligible for rehire from a previous employer where she worked from 2014 until 2018 due to allegations that she used her company credit card for personal purchases; (d) was arrested and charged in June 2012 with coupon fraud over the course of her employment with a previous employer; and (e) was arrested and charged in February 2008 with theft that occurred during her employment with another employer.

In Applicant's response to the SOR, she denied most of the allegations covered by Guideline F with explanations. She claimed she paid off several of the debts and could not identify the others covered by SOR ¶¶ 1.a-1.c, 1.e, 1.g-1.h, 1.j-1.k and 1.m. For the debts she admitted (SOR ¶¶ 1.d, 1.f, 1.i, 1.l, and 1.n) she claimed she was looking into them and would be making arrangements to pay them. She further claimed that she is making more money now and is very dependable and dedicated to her job.

Addressing the allegations covered by Guideline E, Applicant denied falsifying the e-QIPS she completed in 2018 and 2021, respectively. She claimed she has never had a repossession or foreclosure and was never evicted or garnished.

Admitting her June 2021 suspension, she claimed she accepted her suspension and found other employment. She claimed she was never charged or confronted with using her company credit card for personal purchases while employed for another employer between 2014 and 2018. She further claimed that she was found not guilty of (a) charged coupon fraud in June 2012 while employed by another employer and (b) theft while employed by a different employer in February 2008.

Findings of Fact

Applicant is a 49-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 never married and has three children from previous relationships (ages 29, 24, and 22. (GEs 1-2; Tr. 22) Only her middle child (who attends college) resides with her. (Tr. 23). She earned a diploma in travel and tourism in February 2000, an associate's degree in February 2002, and a bachelor's degree in December 2005. (GEs 1-2) Applicant reported no military service.

Since November 2021, Applicant has been employed as a security officer for her current employer. (GEs 1-2) She reported unemployment between September 2021 and November 2021 and between February and March 2018. (GEs 1 and 3). Between March 2018 and September 2021, she worked for a federal agency as a security officer. She held various jobs with other employers between April 1999 and February 2018. Applicant held a security clearance with the federal agency she worked for between March 2018 and September 2021. (GEs 1; Tr. 23, 27)

Applicant's finances

Between 2013 and 2020, Applicant accumulated 14 delinquent accounts exceeding \$24,000. (GEs 3-4 and 6-8) To date, Applicant has provided no documentation of addressing any of the listed SOR debts. One of the listed SOR debts (SOR ¶ 1.a) covers a delinquency balance on a vehicle she purchased in 2016 for \$10,712. (GEs 3 and 6-8) While the loan has since been charged off, Applicant retains possession of the vehicle with no plans to pay off the debt. (GEs 68; Tr. 28-30)

Another debt (SOR ¶ 1.c) covered a telecommunications account opened in 2017 and placed for collection in 2021. (GEs 6-7) Applicant claimed that her cell phone covered by the account was stolen and reported to the police and SOR 1.c creditor. (Tr. 71-74) Told by the creditor that she did not need to worry about the account, she never followed up with the creditor or addressed the debt. (Tr. 74) Without any documentation covering her conversations with the creditor, her claims of forgiveness by SOR creditor 1.c cannot be accepted as sufficient to resolve the debt.

Other debts covered by the SOR remain unresolved and outstanding. While Applicant claims to have paid off two of the debts (SOR ¶¶ 1.j-1.k), lacked awareness of others (SOR ¶¶ 1.g-1.h and 1.m), and committed to look into the remaining ones (SOR ¶¶ 1.f, 1.i, 1.k-1.l, and 1.n), she provided no documentation of any efforts to track down these debts and either validate and resolve them or dispute them with documented evidence. Other debts that she acknowledged as her own, she furnished no documentation of any initiatives on her part to contact her creditors and either work out payment arrangements or explain why she could not reach any positive settlements with the creditors.

Applicant's e-QIP and PSI omissions

Asked to complete an e-QIP in December 2021, Applicant omitted material facts related to her delinquent debts she accumulated between 2013 and 2020. (GEs 1, 3-4,

and 6-8) More specifically, section 26 of her September 2021 e-QIP asked for answers, *inter alia*, covering any delinquent accounts she incurred, any involuntary repossessions, any accounts turned over to a collection agency, any accounts charged off or cancelled for failure to pay as agreed, any garnishments or attachments for any reason, and any accounts over 120 days delinquent within the previous seven years. (GE 1) Responding to each of the questions in her 2021 e-QIP, Applicant answered no without any explanations or qualifications in the comment section of the e-QIP.

Applicant's only explanations for her denials of any debt delinquencies in the e-QIPs she completed were her claims of unawareness of any listed delinquent accounts in her credit report. See Applicant's SOR response and hearing testimony.

In a follow-up personal subject interview (PSI) with an investigator from the Office of Personnel Management (OPM) in January 2022, Applicant was asked during the course of her interview whether she has any delinquent accounts, and she initially confirmed the correctness of all of the information about her finances that she provided in her 2021 E-QIP. (GE 3) After being afforded the opportunity to provide voluntary information about her finances, she was confronted by the investigator about each of the debts listed in the SOR. (GE 3) Once confronted, Applicant admitted the debts and provided explanations about the debts and what steps she intended to take to address them, (GE 3)

Considered together, and taking account of her explanations and all of the circumstances surrounding Applicant's debt accruals and ensuing denials over the course of many years, Applicant's withholding of material information about the details of her accumulated debts in her 2021 e-QIP and ensuing PSI, inferences are warranted that her material omissions were the result of candor and judgment lapses that were corrected only after confrontation by her interviewing OPM investigator in her January 2022 PSI.

Other incidents covered in the SOR reflect acts of dishonesty on Applicant's part that when stitched together form a pattern of dishonest conduct over a period of many years (even without convictions). Each of these incidents were covered in Applicant's 2022 PSI. Confronted by the OPM investigator in her 2022 PSI with a reported incident in February 2008, in which she was reportedly arrested and charged with theft that occurred during her employment at a previously listed employer, Applicant acknowledged the incident, while defending her actions, and claimed she was subjected to a deferred judgment (not a conviction), placed on two years of probation, and ultimately discharged from the deferred judgment. (GE 3) Similarly, when confronted by the OPM agent with a reported 2013 incident, in which she was charged with coupon fraud while employed by another listed employer, Applicant acknowledged her charged actions, her ensuing *Alford* plea, and her acceptance of the court's imposed probation and fine. (GEs 3 and 5; Tr. 64-67))

In addition to the raised 2008 and 2013 theft and fraud incidents, Applicant was asked in her 2022 PSI about employer allegations of a 14-day suspension from her employment with a government employer in June 2021 over multiple complaints about

her behavior from supervisors, co-workers, and passengers. (GE 3) Applicant acknowledged her suspension, while attesting to her vacating her employment in September 2021. (GE 3; Tr. 60-61)

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.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative and adjudicative processes. . . . AG ¶ 15.

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 accumulation of delinquent debts (14 in all) exceeding \$24,000. Additional security concerns are raised over Applicant’s material omissions of her delinquent debts in the e-QIP she completed in 2021 and additional reported incidents involving lapses in candor and judgment.

Financial concerns

Applicant’s accumulation of delinquent debts warrant the application of two disqualifying conditions (DCs). DC ¶¶ 1.a, “inability to satisfy debts,” and 1.c, “a history of not meeting financial obligations,” 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); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016).

Addressing Applicant’s delinquent debts, all of the debts listed in the SOR are supported by Applicant’s credit reports in evidence. Credit reports are business records

that generally are sufficient to meet the Government's evidentiary obligations under Directive ¶ E3.1.14 for pertinent allegations (financial in this case). See ISCR Case No. 08-12184 at 5 (App. Bd. Jan 7, 2010) Of the listed SOR debts in this case,

To date, Applicant has not addressed any of the listed SOR debts with credible documentation. Promised checking on the debts she acknowledged in her 2022 PSI interview were never documented. Applicant's commitments (both in her PSI and SOR response) to address her still unresolved SOR debts that she can verify, while encouraging, represent no more than inchoate promises to resolve her still outstanding accounts and are not viable substitutes for a track record of paying debts in a timely manner and otherwise acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019)

Personal Conduct Concerns

Additional security concerns arise over Applicant's arrest and disciplinary history and failure to disclose relevant material information to an OPM investigator when asked to do so. Applicant's presented history of arrests, disciplinary infractions, and candor lapses, for which she failed to timely correct, warrant the application of two DCs of Guideline E. DCs ¶¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities"; and 16(c), "credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information, fully apply to the facts and circumstances covering Applicant's situation.

Considered together, Applicant's multiple omissions of her delinquent accounts in her completed 2021 e-QIP, for which she acknowledged only after being confronted by an ensuing OPM investigator, reflect serious candor and judgment lapses by Applicant. Additional lapses of candor and judgment are reflected in Applicant's 14-day suspension in June 2021 from a prior employer and her 2012 and 2008 arrests and charges of coupon fraud, respectively, for which she accepted court-offered plea agreements. When aggregated, Applicant's individual lapses in candor and judgment conflate to create material questions about her overall trustworthiness, reliability, and good judgment. None of the mitigating conditions potentially available to Applicant are applicable.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her debt delinquencies and candor and judgment lapses 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 employment contributions are not enough at this time to overcome her repeated failures or inability to address her payment responsibilities and exercise of candor and good judgment 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 and personal conduct concerns within the foreseeable future. More time is needed for her to establish the requisite levels of stability with her finances and restoration of trust, reliability, and good judgment necessary 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 and personal conduct security concerns are not mitigated. Eligibility for holding a security clearance 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 (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.n: Against Applicant

GUIDELINE E (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.f: 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