



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



In the matter of:)
)
) ISCR Case No. 23-01706
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2024

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 1, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudication Service (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 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 September 6, 2023, and requested a hearing. This case was assigned to me on January 4, 2024. A hearing was scheduled for February 4, 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 exhibit (AE A) and one witness (herself). The transcript (Tr.) was received on February 20, 2024.

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 updated payment arrangements with her lone creditor holding a delinquent account balance. For good cause shown, Applicant was granted 14 calendar days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with an emailed settlement offer sans any documented agreement of the settlement terms or accompanying payments. Applicant's post-hearing exhibit was admitted without objection as AE B.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated on delinquent debt of \$42,581. Allegedly, this debt remains unresolved and outstanding.

In Applicant's response to the SOR, she admitted the allegations contained in SOR ¶ 1.a with explanations. She claimed to be in contact with the creditor in hopes of settling the account with affordable payments that will afford her some time to take care of the debt.

Findings of Fact

Applicant is a 41-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 no children. (GE 1) She earned a high school diploma in June 2000. Applicant reported no military service. Since October 2022, she has been employed as an administrative coordinator for her current employer. (GE 1) Previously, she worked for other employers in various jobs. Applicant reported unemployment in August 2022 following her termination for cause. (GE 1) Applicant has never held a security clearance. (GE 1)

Applicant's finances

Plagued by dental issues, Applicant turned to implants in 2018 to stabilize her teeth. (Tr. 17) In describing her dental condition, she explained that her teeth had

become very brittle. Symptoms from her condition Included dry mouth and dry eyes that became so severe that medications prescribed could no longer arrest the increasingly debilitating pain she was experiencing. (Tr. 17) Accepting the advice of her dentist in 2018, Applicant entered into a contract with a dental financial services company to cover the estimated costs of her planned implant surgery.

Before Applicant could appear for her scheduled implant services, she lost her job over administrative issues. (GEs 1-2; Tr. 17-18) Rather than cancel her scheduled dental services, she made the decision to go ahead with the implant services, which she did in July 2018 for the billed contract amount of \$42,581, or thereabouts. (Tr. 22) Without dental insurance coverage or other sources of income, she became the lone responsible party for covering the costs of the implant services, (GE 2; Tr. 50-51)

Following her implant surgery and her ensuing two weeks of recovery, Applicant found a new low-paying job and contacted her financial services company to arrange suitable monthly payment terms. (AE A; Tr. 19-20) Arranged payment terms with the financing agency (SOR ¶ 1.a) called for monthly payments of \$356, with monthly payments scheduled to commence in August 2018. (AE A; Tr. 24) Applicant agreed to these payment terms and made several payments in 2018 and 2019 while looking for a better paying job. (AE A; Tr. 24)

With the new job she landed in 2018, Applicant assured her financing agency of her intentions to make monthly payments. (Tr. 23). And with the aid of a new job, she was able to make several payments to her financing agency. (AEs A-B; Tr. 28-29) The new job she took lasted only a few months, however, and in February 2019, she informed her dental financing agency that she could no longer make her agreed monthly payments. (Tr. 28-29)

Even after finding other employment in early 2019, Applicant did not resume her monthly payments with her dental financing lender. Citing needed repairs on her home, she took out another loan to finance the repairs without notifying her lender of the home loan and renewed need for a payment pause. (Tr. 31) Both her credit reports and account summaries confirm her failure to make any payments on her dental financing contract between August 2019 and September 2023. (GEs 3-4 and AEs A-B; Tr. 31) And, during this time, she made no efforts to contact her SOR 1.a creditor to work out new payment plan terms, notwithstanding her receipt of promotions from her employers. (Tr. 31-32)

Between February 2019 and August 2022, Applicant received promotions from her then employer. After receiving the SOR in September 2023, Applicant briefly resumed her payments to her dental financing lender and, accordingly, is credited with making four monthly payments of \$50, respectively, between September 2023 and January 2024. (AE A; Tr. 48-49) Although, the post-hearing settlement offer that Applicant received was not accompanied by any documented acceptance and good-faith payments from Applicant. Terms of the creditor's settlement offer are summarized as follows: a reduced repayment amount of \$29,000 and monthly payments of \$1,600 spread over an 18-month period. (AE B)

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 accumulation of a delinquent debt exceeding \$42,000. This debt arose out of dental financing that Applicant arranged in 2018 to cover a dental implant procedure.

Financial concerns

Applicant’s single debt delinquency warrants the application of two of the disqualifying conditions (DC) of the financial consideration guideline. DCs ¶¶ 19(a), “inability to satisfy debts” and 19(c), a history of not meeting financial obligations” fully apply to Applicant’s situation.

Applicant’s admitted dental financing debt requires no independent proof to substantiate it. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). Her accrued major debt delinquency is fully documented and creates judgment issues as well over the management of her finances. See ISCR Case No. 03-01059 (App. Bd. Sept. 24, 2004). For evidentiary purposes, 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)

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 of 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).

Without any evidence of a renewed dental financing payment plan and good-faith payments from Applicant, none of the potentially available mitigating conditions are available to Applicant. Knowing she could encounter payment delays and challenges after losing her job, she proceeded with her dental procedure without any reserved

payment options. After making a few payments in 2019, she ceased addressing her dental financing loan altogether until after she received the SOR in September 2023.

While Applicant's resumed payments on her delinquent loan are encouraging, they are not enough to establish a meaningful track record on the debt. 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 delinquent consumer, medical, 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).

Applicant's commitments to explore workable payment terms with her lender, while encouraging, represents no more than an inchoate promise to resolve her still outstanding account and is not a viable substitute 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. Sep 26, 2019)

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of delinquencies with her major dental financing lender is 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 timely address her payment responsibilities with her lender 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 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 F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraph 1.a:

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