



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



In the matter of:)
)
) ISCR Case No. 23-011285
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/22/2024

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 July 25, 2023, 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 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 (undated) and requested a decision on the written record in lieu of a scheduled hearing before an administrative judge. The File of Relevant Materials (FORM) included nine exhibits (Items 1-9) that were admitted without objection. Applicant received the FORM on November 16, 2023, and timely supplemented the record with additional information. Applicant's post-FORM submissions were admitted without objection as Items 10-16. This case was assigned to me on March 5, 2024.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) is indebted to the Federal Government for delinquent taxes in the approximate amount of \$49,349 for tax years 2009, 2015-2020; (c) filed for Chapter 13 bankruptcy relief in about September 2016; and (d) accumulated five delinquent consumer debts exceeding \$3,100. Allegedly Applicant's federal tax filing for 2021 and the alleged delinquent debts remain unresolved and outstanding.

In Applicant's response to the SOR, she admitted three of the allegations. Specifically, she admitted her alleged failure-to-file her 2021 Federal income tax return, her alleged tax indebtedness to the federal Government; and her Chapter 13 bankruptcy filing with explanations. She claimed she is currently working with a tax group to establish payment arrangements she can afford. She also claimed that she filed her federal tax return for 2021 through a turbo tax preparation device and received an emailed confirmed receipt of her filing. Applicant further claimed the Internal Revenue Service's (IRS) denial of receipt of her 2021 tax return allegations and her continuing efforts to correct the non-filing with the help of a working tax group.

Addressing the alleged delinquent consumer debts covered in the SOR, she denied any debts owed, claiming they have all been resolved and no longer appear on her credit reports. She further claimed that she has learned lessons from her Chapter 13 bankruptcy filing and hopes to be more financially responsible in the future.

Findings of Fact

Applicant is a 40-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 on February 26, 2000 and has two children from this marriage. (Item 3) She earned a master's degree in May 2015. (Item 3) Applicant reported no military service. Since March 2019, Applicant has been employed as a supply chain specialist. (Item 3) She supplements her income with work as a caregiver. Previously, she worked for other employers in various jobs. Applicant has never held a security clearance. (Item 3)

Applicant's finances

Applicant has struggled with her finances for many years. Faced with mounting debts, she twice petitioned for Chapter 13 bankruptcy relief: once in 2011 and again in 2016. (Items 8-9) Both of her bankruptcy filings were dismissed for failure to make her required plan payments: one in 2014 and the other in 2018. (Items 8-9) Tax records document that Applicant did not timely file her Federal income tax return for tax year 2021. (Items 1-4, 13, and 16) Tax records also confirm that Applicant is indebted to the Federal Government in the approximate amount of \$49,349 for tax years 2009, 2015-2017, 2019-2020, and 2022. (Items 1-4) In her post-FORM submissions, she documented the preparation of her 2021 federal tax return without the signature of her tax preparer and filing date. Whether and when her 2021 federal tax return has been filed remains unclear, (Items 13 and 16)

Equally uncertain is the proposed payment plan her tax counselor prepared for her in November 2023. (Item 13) The proposed installment agreement covers a calculated balance of \$57,850 (inclusive of accrued interest) offers monthly terms of \$850 and is subject to IRS approval. With an average monthly checking account balance running close to \$10,000 to her credit and a modest savings account to draw upon in emergency situations (Items 14-15) IRS approval of her payment plan, while promising, has yet to be finalized. Whether she can keep up her propose \$850 monthly payments these payments (assuming IRS approval) is uncertain at this point without an historical payment track record with the IRS to raw upon.

Further, Applicant failed to provide any documented support for her claims that all of her delinquent SOR-listed consumer debts (five in all exceeding \$3,100) have been paid or otherwise resolved. While her reported delinquent student loan debts (no longer paused by the Department of Education (DoE)) draw some potential concern, they are not covered in the SOR. (Item 5)

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 2021 federal tax return and incur over \$49,000 in delinquent federal tax debts covering multiple years. Additional security concerns are raised over Applicant’s accumulation of delinquent consumer debts (five in all) exceeding \$3,100.

Financial concerns

Applicant’s 2021 federal tax-filing lapse and accumulated delinquent tax and consumer 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, tax indebtedness, and dismissed Chapter 13 bankruptcy filing, albeit accompanied by explanations of her claimed updated filing of her tax returns and proposed installment plan with the IRS, require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). Her admissions are fully documented and create judgment issues as well 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 failures and 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 Applicant’s timely filing (with or without approved IRS extensions) of her 2021 federal tax return and paying or otherwise resolving her owed federal tax and consumer debts, none of the potentially available mitigating conditions are fully available to her. 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, 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).

Addressing Applicant’s delinquent tax and consumer debts, all of the debts listed in the SOR are supported by Applicant’s credit reports and produced tax information and 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)

Applicant’s recent commitments (aided by the tax firm she engaged) to address her previously unfiled 2021 federal tax return and tax debts, while encouraging, represent no more than inchoate promises to file her still outstanding 2021 federal tax return and resolve her still outstanding tax accounts. Without more information from Applicant her commitments alone 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. Sep 26, 2019) That some or all of her SOR-listed debts no longer appear on her most recent credit report, without proof of their being paid or otherwise favorably resolved by voluntary means, cannot be afforded more than partial mitigation credit. In recognition of her recent initiatives, partial application of MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” is available to her.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether her history of tax-filing lapses and debt delinquencies (both tax and consumer) are fully compatible with minimum standards for holding a security clearance. While deserving of credit for her work in the defense industry, her contributions are not enough at this time to overcome her failures 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 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

Subparagraphs 1.a-1.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