



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



In the matter of:)	
)	
)	ISCR Case No. 23-01268
)	
Applicant for Security Clearance)	

Appearances

For Government: Cassie Ford, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2024

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated the financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of Case

On July 6, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (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 (undated) and requested a hearing. This case was assigned to me on October 24, 2023. A hearing was scheduled for December 15, 2023 and heard as scheduled via Microsoft Teams Teleconferencing Services. At the hearing, the Government's case consisted of eight exhibits. (GEs 1-8) Applicant relied on one witness (himself and four exhibits (AEs A-D. The transcript (Tr.) was received on January 4, 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 documented additional payment information on his SOR-covered delinquent accounts. For good cause shown, Applicant was granted 14 days to supplement the record. Department Counsel was afforded seven days to respond. Within the time permitted, Applicant supplemented the record with documented settlements with SOR creditors information 1.b-1.c and other information. Applicant's submissions were admitted without objection as AEs E-I.

Summary of Pleadings

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

In his response to the SOR, Applicant admitted the allegations covered by SOR ¶¶ 1.a and 1.d with explanations. He denied the allegations covered by SOR ¶¶ 1.b and 1.c with explanations.

Findings of Fact

Applicant is a 53-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 November 1992 and has two biological adult children and one adult stepchild from this marriage (ages 23, 28, 31, and 33). (GE 1; Tr. 31) He earned a certificate in technology in December 1993. (GE 1) He reported no military service. (GE 1; Tr. 32)

Since December 2018, Applicant has been employed by his current contractor as an control operations team lead. (GE 1; Tr. 30) Previously, he worked for other employers in various electronic technician positions. (Tr. 30) He has held a security clearance since May 2011. (Tr. 32)

Applicant's finances

Between 2017 and 2018, Applicant accumulated four delinquent accounts exceeding \$25,000. (GEs 2-5) Credit reports document these four accounts covered by SOR ¶¶ as follows: 1.a (an auto loan account for \$11,810); 1.b (a medical account for \$121); 1.c (a medical account for \$74); an 1.d (a motorcycle financing loan for \$13,146),

Applicant attributed his debt delinquencies to a series of unforeseen circumstances: medical issues associated with his open heart surgery he underwent in 2012 that was not fully covered by his health insurance; a motorcycle accident in which he broke his hand and needed surgery to repair the break; co-pay outlays on an homeowners insurance claim for a damaged roof on his home; and reliance on his son to defray the costs of a co-signed motorcycle loan originated in 2018. (AEs H-I; Tr. 33-39)

After making several payments in April 2022 on his co-signed motorcycle loan, Applicant ceased making payments before resuming his payments in September and October 2022, respectively. (Tr. 32-39) In September 2023, he made one lump sum payment to SOR creditor 1.a to fully settle the debts for a reduced amount of \$4,644. (AE E; Tr. 40-41)

Addressing his remaining listed debts, Applicant has no recollection of these listed medical accounts, and he disputed both accounts with three credit reporting agencies. Finding these reported medical accounts to be unsubstantiated, the credit reporting agencies deleted them from his credit reports in 2023. (AE F) Applicant's only remaining delinquent account concerned a motorcycle loan he co-signed for his son in March 2018 for \$21,237. (GEs 4-7 and AE G; Tr. Tr. 53-54) Applicant's son had ceased making payments in 2018 and returned the vehicle to the seller on the advice of Applicant. (GEs 4-7; Tr. 46-47) Applicant has since settled the account for a reduced amount of \$13,766. (AE G; Tr. 47-48)

Applicant currently grosses \$82,000 annually and nets \$5,000 a month. (Tr. 49) His wife earns \$20 an hour but no longer shares their monthly household expenses with him. (Tr. 48-49) Applicant owns one car and makes the monthly payments for both his car and his wife's vehicle for a total of \$600 a month. (Tr. 50)

In October 2023, Applicant paid off the balances due on his credit cards with the refinancing of his home. (Tr. 51-52) Before resuming responsibility for handling his car payments and other expenses in December 2020, he relied on his wife to make the required payments and monitor their accounts. (AE H; Tr 53) Most of his delinquencies occurred before his wife took early retirement. (Tr. 54)

Applicant does not have a retirement account to address emergencies, and he is working on a monthly budget without the aid of formal financial counseling. (Tr. 54-55) He estimates he has a monthly remainder of \$1,100 a month. (Tr. 74)

Endorsements

Applicant is well-regarded by his managers and supervisors. (Tr. 60-62) His manager is aware of his financial situations and the steps he is taking to address them. (Tr. 60-62) Both credit him with honesty and trustworthiness.

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 four 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."

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). In Applicant's case, his medical issues associated with a motorcycle accident and his reliance on his son to make the required monthly payments on his co-signed motorcycle loan played some role in his accruing of the two major debts covered by the SOR (i.e., SOR creditors 1. a and 1.d).

Applicable mitigating conditions (MC) include 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 circumstance"; 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts"; and 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to

substantiate the basis of the dispute or provides evidence of actions to resolve the issue,” apply to Applicant’s situation. .

While Applicant has been somewhat dilatory about monitoring and addressing his debts, extenuating circumstances and mitigating conditions have been major factors. Overall, his debt management initiatives have been encouraging and helped him to meet his evidentiary burdens of demonstrating the responsible requirements of MC ¶ 20(b) for managing her finances.

For the two remaining small medical debts he disputed, Applicant successfully disputed them with the three principal credit reporting agencies. 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 able to demonstrate a sufficient tangible track record of actual debt reduction (viz., SOR ¶¶ 1.a and 1.d) to satisfy Appeal Board guidance associated with the responsible and good-faith payment requirements of MCs ¶¶ 20(b) and 20(d).Applicant’s remaining medical debts were successfully disputed and removed from his credit reports.

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, his extenuating circumstances associated with his medical issues and over reliance on his son to manage his cosigned motorcycle loan, he has shown sufficient responsibility in regaining control of his finances to enable his 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 mitigated. Eligibility for access to classified information is granted.

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): FOR APPLICANT

Subparagraphs 1.a-1d:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge