



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



In the matter of:)
)
-----) ISCR Case No. 23-01132
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2024

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On September 14, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central 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 on September 28, 2023, and requested a hearing. This case was assigned to me on February 20, 2024. A hearing was scheduled for April 15, 2024, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of five exhibits. (GEs 1-5), which were admitted without objection. Applicant relied on one witness (himself) and one exhibit (AE A), which was admitted without objection. The transcript (Tr.) was received on April 18, 2024.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated six delinquent consumer debts exceeding \$33,000. Allegedly, his delinquent accounts have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted all of the alleged debts with explanations and clarifications. He claimed all of the SOR-listed debts are the direct result of the legal expenses he incurred associated with his divorce after years of marriage. He claimed that the SOR ¶¶ 1.a and 1.c debts will fall off his credit report for reaching the "7-year limit." He also claimed the SOR ¶ 1.b debt represents a deficiency balance on a repossessed vehicle. Applicant further claimed that he will be able to take care of all of his listed SOR ¶¶ 1.d and 1.e debts by January 2024. He claimed to have paid the SOR ¶ 1.f debt. And, he claimed he will be able to pay off all of his remaining SOR-listed debts by April 2024, if he retains his security clearance.

Findings of Fact

Applicant is a 38-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 December 2007 and divorced sometime in 2011 (exact date uncertain). February 2011. (GE 1) He has two children from this marriage. He remarried in June 2011 and divorced in December 2018 with no children from the marriage. Applicant earned a high school diploma in May 2004 and has attended college classes since 2013 without earning a degree or diploma. (GEs 1-2)

Applicant enlisted in the Army Active Reserve of the National Guard of the state of his residence in July 2007 and served 12 years of active duty before receiving an honorable discharge in June 2019. (GE 1; Tr. 13)

Since April 2020, Applicant has been employed as a cyber security manager. (GE 1; Tr. 27) Previously, he worked for another employer as an information system security manager before his termination for cause in April 2020. (GE 1) He has held a security clearance since 2009. (GE 1; Tr. 26-27)

Applicant's finances

Between 2017 and 2022, Applicant accumulated six delinquent consumer debts exceeding \$30,000. (GEs 1-4) The SOR-covered debts are listed as follows: SOR ¶¶ 1.a (a credit card debt for \$12,605); 1.b (a deficiency balance on a repossessed vehicle in December 2019 for \$12,802); 1.c (a credit card debt for \$6,176); 1.d (a credit card account for \$704); 1.e (a consumer debt for \$662); and 1.f (an apartment rental debt for \$424). Applicant attributed these delinquent accounts to his heavy legal expenses associated with his contested divorce in December 2018 and his ensuing income shortfalls. (Tr. 21-22) His divorce decree does not require any spousal sharing of these accrued pre-marital debts.

To date, Applicant has not addressed any of the debts listed in the SOR with documented payments and payment plans. (GEs 2-5; Tr. 22-29) While he expects several of the debts to fall off his credit report by 2025, he has taken no action on any of the listed accounts. (Tr. 27-28)

Still, he insists that he is willing to address his debts only if he is afforded assurances that he can keep his security clearance. (Tr. 30-31) Even with the \$15,000 bonus he expects from his work this year and the considerable monthly remainder he retains, he remains unwilling to pay off the debts without assurance of keeping his security clearance. (Tr. 24, 32-33)

Applicant has recently engaged a credit repair firm to monitor his debts. (Tr. 39-40) Reported results of the firm's progress are not available. Based on available evidence, his SOR-listed debts remain unresolved and outstanding. (GEs 2-4; Tr. 26-29) Creditors that Applicant has contacted to date (e.g., SOR creditor ¶ 1.b) will accept only lump sums in settlement that Applicant is not willing to make without assurance of keeping his security clearance. (Tr. 28-30)

Applicant reported no financial counseling. He reported net monthly income of \$11,200 (inclusive of his \$2,200 monthly VA disability payment) and monthly expenses of \$6,000. (GE 2; Tr. 27, 42-43, 46) After allowing for monthly expenses, he has an estimated monthly remainder of approximately \$5,200. (Tr. 43)

With his currently available resources (even without appreciable savings) and decreased child support obligations, he is well-positioned to address his SOR debts and assured his willingness to do so. (Tr. 41-42, 47) So far, though, he has not set up any payment plans with any of his creditors, and he has no current timetable for doing so. without assurances of keeping his security clearance. (Tr. 38-40, 55)

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 AGs 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 reported accumulation of six delinquent consumer accounts exceeding \$33,000. These debt delinquencies warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19(b), "unwillingness to satisfy debts regardless of the ability to do so"; and 19(c), "a history of not meeting financial obligations." Each of these DCs 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).

Applicant cited heavy legal expenses associated with his 2018 divorce and ensuing income shortfalls as factors contributing to his past debt delinquencies. He has avoided any breaks in employment since his divorce, however, and is financially positioned to address his debts. What has prevented him from paying off and setting up payment plans with his creditors has been his insistence on receiving assurances of keeping his security clearance as a *quid pro quo* to addressing his delinquent debts.

Partially applicable mitigating conditions (MC) of AC F is limited to ¶ 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 circumstances." Because Applicant has not documented any actions taken to resolve his SOR-listed debts through payments and payment plans, he cannot satisfy the "acted responsibly under the circumstances" prong of ¶ 20(b).

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). Without more evidence from Applicant of his addressing his delinquent accounts with payments and payment plans, favorable resolution of Applicant's financial situation cannot be reached.

Well-intentioned promises linked to security clearance assurance preconditions cannot be substituted for a voluntary, good-faith track record of payments. Based on the evidence presented, Applicant is not able to demonstrate a sufficient tangible payment

