



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



In the matter of:)
)
-----) ISCR Case No. 23-01330
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

05/29/2024

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 June 30, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAF 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 July 26, 2023, and requested a hearing. This case was assigned to me on January 1, 2024. A hearing was scheduled for April 8, 2024, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on April 18, 2024.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with an updated credit report. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Within the time permitted, Applicant supplemented the record with a documented credit summary that confirmed the removal of four unnamed creditors. Applicant's submission was admitted without objections as AE A.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated seven delinquent consumer debts exceeding \$60,000. Allegedly, his delinquent accounts have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted all of the alleged debts. He added no explanations or clarifications.

Findings of Fact

Applicant is a 28-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 February 2015, separated in February 2019 over issues of infidelity, and divorced in June 2020. (GE 1; Tr. 19-20) He has no children. He attended high school classes between August 2010 and May 2014, but earned no diploma. (GE 1). Applicant enlisted in the Army in May 2014 and served five plus years of active duty before receiving a general discharge in January 2020 after testing positive for cocaine. (GE 1; Tr. 22)

Since August 2021, Applicant has been employed as a security officer. (GE 1; Tr. 25) He reported unemployment between January 2020 and August 2020 while taking college classes and between December 2020 and August 2021 following his work suspension over his COVID-19 diagnosis. (GE 1; Tr. 23-26) Applicant reported additional unemployment between August 2013 and September 2014. (GE 1) Applicant has never held a security clearance.

Applicant's finances

Between 2013 and 2020, Applicant accumulated seven delinquent consumer debts exceeding \$60,000. (GEs 1-4) All of the debts were accrued during his marriage and were originated in his name individually. (GEs 2-4; Tr. 35) Applicant attributed his debt delinquencies, in part, to his 2020 divorce and periods of unemployment. (Tr. 21-22)

To date, Applicant has not addressed any of the debts listed in the SOR with documented payments and payment plans. While several of the listed SOR debts have since been removed from his credit report, he provided no explanations of their removal. (AE A) Although, removal of the debts likely contributed to his improved credit scores.

Through a credit repair firm he engaged in December 2023, he has continued to dispute the SOR debts in issue. (Tr. 28-35, 38-39) However, he has provided no documentation of his exchanges with his credit repair firm, or achieved results (if any), save for the four unnamed debts removed from his credit report. (AE A) At this time, Applicant's listed SOR debts cannot be credited with any successful disputes. Based on available evidence, his SOR-listed debts remain unresolved and outstanding. (GEs 2-4; Tr. 26-29)

Applicant reported no financial counseling. He currently earns \$92,000 annually. (Tr. 26) After allowing for monthly expenses, he has an estimated monthly remainder of approximately \$200. (Tr. 37) With his limited resources, he hopes to be able to set up modest payment plans. (Tr. 38) 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. (Tr. 38)

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 seven delinquent consumer accounts exceeding \$60,000. 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.” 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 periods of unemployment as factors contributing to his past debt delinquencies. Disputing all of the SOR-listed debts, he has retained a credit repair firm to dispute the debts. Whatever progress he has achieved in resolving his debt delinquencies is not documented. Without evidence of the nature of his disputes with his creditors and results achieved, no reasonable basis for disputing the debts can be assigned to Applicant's delinquent debts in issue.

Partially applicable mitigating conditions (MC) 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 information from Applicant, debts removed from his credit report, while likely factors in the improvement of his credit scores, cannot be considered evidence of SOR debt payments, payment plans, or resolution by other good-faith means.

Well-intentioned promises and intentions, while encouraging, 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 history of actual debt reduction or documented reasonably mounted disputes to satisfy Appeal Board guidance associated with the good-faith and responsible payment and dispute requirements of MC ¶¶ 20(b), MC 20(d), and 20(e).

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. Applicant's problems in managing his finances have been impacted by his 2020 divorce and his periods of unemployment, and have not improved in any cognizable way since his return to full-time employment in August 2021. Taking

into account his credited defense contributions and his extenuating circumstances associated with his recurrent periods of unemployment, he has shown insufficient progress in addressing his debts and regaining control of his finances.

Without a better track record of good-faith, responsible payment initiatives and documented reasonable measures undertaken to challenge those debts he disputes, his efforts to date fall short of the level of financial responsibility required to demonstrate his regaining control of his finances. Favorable resolution of Applicant's handling of his debts cannot be made without a better track record of payment initiatives and documented good faith reasonable disputes of the debts he challenges.

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 access to classified information 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.g: 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