



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



In the matter of:)
)
) ISCR Case No. 23-01866
)
Applicant for Security Clearance)

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2024

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 8, 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 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 on October 6, 2023, and requested a hearing. This case was assigned to me on February 20, 2024. A hearing was scheduled for April 17, 2024, and was heard on the scheduled date. 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 two exhibits (AEs A-B), which were admitted without objection. The transcript (Tr.) was received on April 30, 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 tax filings, tax papers, and student loan debt payments history. 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 student loan debt resolution payment history, an Internal Revenue Service (IRS) payment history, and a settlement offer from SOR creditor 1.f. Applicant's post-hearing submissions were admitted without objection as AEs C-E.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file his federal income tax returns, for tax years 2017, 2018, and 2020, (b) is indebted to the Federal Government for delinquent taxes in the approximate amount of \$7,016 for tax year 2021; (c) is indebted to the Federal Government for delinquent taxes in the approximate amount of \$11,365 for tax year 2018; (d) accumulated nine delinquent consumer debts exceeding \$26,000; and (e) accrued 12 delinquent student loan debts exceeding \$61,000. Allegedly, Applicant's tax filing for the years in issue remain unfiled, and his alleged delinquent debts remain unresolved and outstanding.

In Applicant's response to the SOR, he admitted his failures to file his federal income tax returns for the years in issue with explanations. He claimed his tax returns for the years in issue were filed on his behalf. And, he claimed payment plans for the back federal taxes owed are in place (attached) Addressing the consumer debt allegations covered by SOR ¶¶ 1.d, 1.e 1.q, 1.s, 1.u. and 1.w-1.x with explanations, while denying the allegations in SOR ¶¶ 1.t, 1.v, and 1.y.

Applicant denied the student loan allegations in SOR ¶¶ 1.g, 1.p, 1.r, 1.t, 1.v, and 1.y. In explanation, he claimed the statute of limitations has run on four of the debts (since removed from his credit report) and the remaining one (SOR ¶ 1.y) was paid in full.

Findings of Fact

Applicant is a 36-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; Tr. 21) He earned a high school general education diploma (GED) in 2006 and attended community college classes between 2010 and 2012 without earning a degree. (GE 1; Tr. 23) Between 2012 and 2016, he attended college classes without earning a degree. (GE 1; Tr. 24) Applicant reported no military service.

Since February 2018, Applicant has been employed as a logistics technician. (GE 1) Previously, he was employed by other employers in various jobs. He reported unemployment between January 2008 and June 2016 (while in college), and between December 2016 and January 2017. (GE 1; Tr. 24-25) Applicant has never held a security clearance.

Applicant's finances

Tax transcripts document that Applicant did not timely file his federal income tax returns for tax years 2017, 2018, and 2020, as required. (GEs 2) Tax transcripts confirm, too, that Applicant is indebted to the Federal Government in the amount \$7,016 for delinquent taxes owed for tax year 2021 and \$11,365 for delinquent taxes owed for tax year 2018. (GE 2) Because Applicant did not timely file his federal income tax returns for tax years 2017, 2018, and 2020, the Internal Revenue Service (IRS) used its own compiled data to calculate Applicant's taxes owed for these tax years in issue. (GE 2)

Applicant attributed his tax-filing lapses to a general lack of personal responsibility. (GE 2) Applicant acknowledged that his 2009-2011 federal tax returns were force-filed by the IRS and his bank account was garnished to satisfy IRS-calculated taxes owed. (GEs 2-4 and AE B; Tr. 28)

Between 2016 and 2023, Applicant accumulated 12 delinquent student loan debts exceeding \$61,000. ((GEs 2-4 and AE C; Tr. 34-35) Applicant made no payments on any of his student loan accounts between 2018 and 2020, and his wages were garnished between March 2019 and April 2020 at rates from \$246 to \$809. (GEs 2-4 and AE C) He completed a fresh start agreement with the U.S. Department of Education (DoE) in May 2023, and he is scheduled to make monthly payments of \$379, beginning in April 2024. (AE A)

Besides his tax and student loan debts, Applicant accumulated nine delinquent consumer debts exceeding \$26,000. Applicant's consumer debts are covered by the SOR as follows: SOR ¶¶ 1.d (a \$9,729 auto loan deficiency on a vehicle repossessed in 2018); 1.e (a credit card debt of \$5,700; 1.f (a utility debt of \$173); 1.q (a credit card debt of \$2,577); 1.s (a credit card debt of \$1,837); 1.t (a consumer account of \$1,413); 1.u (a credit card account of \$1,407; 1.w (a utility account for \$380); 1.w (a consumer account of \$380); 1.x (a consumer account of \$1,004); and 1.y (a utility account of \$57). (GEs 1-5; Tr. 37-45)

None of the covered delinquent tax and student loan debts in the SOR have been voluntarily addressed by Applicant to date with the financial resources available to him. Involuntary garnishments and bank account withholdings cannot be credited as voluntary, good faith payments of his IRS and student loan debts.

Applicant reported net monthly income of \$4,563 (inclusive of pension income) and monthly expenses of \$2,650. (GE 2; Tr. 28-29) After accounting for monthly reductions of \$1,913 to cover other financial obligations and taxes owed the IRS (\$18,381) , he reported no available remainder. (GE 2)

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 (a) timely file his federal, income tax returns for tax years 2017, 2018, and 2020, (b) satisfy delinquent 2018 and 2021 federal taxes owed with voluntary payments prior to the issuance of the SOR; and (c) address his delinquent student loan and consumer debts with voluntary payment initiatives prior to the issuance of the SOR. Documentation from Applicant addressing these findings was not provided.

Financial concerns

Applicant’s multiple federal and state tax-filing lapses and owed state taxes 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 documented tax-filing lapses, albeit accompanied by explanations of the circumstances surrounding his failures to timely file his federal tax returns for the years in issue, require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). His admitted tax-filing failures are fully documented and raise judgment issues as well over the management of his 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 (as here) 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) IRS approved extensions of time for those federal tax returns (years 2017, 2018, and 2020) that Applicant failed to timely file, or good cause demonstrated for his multiple failures to file his federal income tax returns for these tax years in issue; (b) good-faith satisfaction of federal taxes owed for tax years 2018 and 2021 (in excess of \$18,000); and (c) timely addressing delinquent student loan and consumer debt delinquencies with voluntary, good faith initiatives before the issuance of the SOR, none of the potentially applicable mitigating conditions are available to Applicant. The Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating good-faith actions taken to resolve financial problems, whether the issues relate to tax-filing lapses, back taxes owed, 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).

Applicants for security clearance eligibility are expected to exercise diligence and care in meeting their financial responsibilities. Reliance on statutes of limitations, removal of reported debt delinquencies on credit reports due to the passage of time, or the lack of enforceability to resolve financial difficulties are of limited mitigative value. See ISCR Case No. 15-01208 at 2 (App. Bd. Aug. 26, 2016) Stated differently, an applicant's reliance upon a statute of limitations does not represent a good-faith effort to resolve an applicant's exhibited financial problems. See ISCR Case No. 03-04779 at 4 (App. Bd. July 30, 2005)

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of multiple tax-filing lapses and debt delinquencies (inclusive of tax, student loan, and consumer debts) are fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for his defense contributions, his defense contributions are not enough at this time to overcome his repeated failures or inability to address his tax-filing and debt payment responsibilities 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 covered in this case, it is too soon to make safe predictions that Applicant will be able to undertake meritorious, good-faith efforts to mitigate the Government's financial concerns within the foreseeable future. More time is needed for him to establish the requisite levels of stability with his finances to establish his overall eligibility for holding a security clearance.

