



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



In the matter of:)
)
-----) ISCR Case No. 23-01545
)
Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2024

Decision

WESLEY, ROGER C. Administrative Judge

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

Statement of the Case

On August 31, 2024, 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 September 11, 2023, and requested a hearing. This case was assigned to me on February 20, 2024. A hearing was scheduled for May 9, 2024, and was heard on the scheduled date. At the hearing, the Government's case consisted of three exhibits (GEs 1-3), which were admitted without objection. Applicant relied on one witness (himself) and five exhibits (AEs A-E), which were admitted without objection. The transcript (Tr.) was received on May 20, 2024.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated five delinquent debts, exceeding \$38,000. Allegedly these debts remain unresolved and outstanding.

In Applicant's response to the SOR, he admitted each of the allegations with explanations and clarifications. He claimed he has enrolled in a debt resolution program that will handle his debt repayments over a 48-month period, if not sooner. He further claimed that he will take financial classes if necessary, and any other programs that will help educate him better on managing his debts.

Findings of Fact

Applicant is a 32-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. 23) He earned a high school diploma in May 2010 and attended community college classes between May 2015 and June 2018 without earning a degree or diploma. (GE 1; Tr. 26) Between March 2018 and November 2021, he attended technical classes and earned several certificates of completion. (GE 1; Tr. 30-32) Applicant enlisted in the Army in January 2012 and served three-plus years of active duty. He received an honorable discharge in May 2015. (GE 1)

Since April 2022, Applicant has been employed as a software developer for his current employer. (GE 1; Tr. 23) Between September 2020 and April 2022, he was self-employed as a delivery driver and audio engineer. (GE 1) Previously, he was employed by other employers in various jobs. He reported periodic unemployment between January 2008 and November 2015 (while in college), and between December 2015 and May 2018. (GE 1) Applicant held a security clearance while in the Army.

Applicant's finances

Between 2014 and 2017, Applicant accumulated five delinquent debts exceeding \$38,000. (GEs 2-3; Tr. 37-57) Applicant's consumer debts are covered in the SOR as follows: SOR ¶¶ 1.a (a delinquent rental account for \$7,613); 1.b (a delinquent credit card account for \$16,605); 1.c (a delinquent credit card account for \$1,062); 1.d (a

delinquent motorcycle loan balance of \$4,951); and 1.e (a delinquent \$11,636 loan balance on a repossessed vehicle originally purchased for \$30,000). (GEs 2-3; Tr. 37-57) Applicant attributed his debt delinquencies to periods of unemployment following his Army discharge and prioritizing his other debts.

Applicant entered into a debt resolution program in September 2023 after receiving the SOR. (AE A; Tr. 43-45, 58) His repayment terms call for bi-weekly payments of \$298.73 over a 47-month period. (AE A; Tr. 43) Applicant documented his making his required bi-weekly payments since September 2023. (AE C) All of his SOR-listed debts are included in his debt resolution program. (AEs A-E; Tr. 53-57)

Applicant reported gross annual income of \$88,000 (inclusive of disability income) and annual expenses exceeding of \$30,000. (GE 2; Tr. 58-64) After covering his monthly expenses, he estimated a monthly remainder ranging between \$200 and \$300. (Tr. 63)

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 five delinquent accounts exceeding \$38,000 and failure to address them prior to the issuance of the SOR in August 2023. Documentation of his finalized September 2023 debt resolution agreement was provided by Applicant.

Financial concerns

Applicant’s documented accumulation of delinquent debts warrant the application of two of the disqualifying conditions (DC) of the financial consideration guideline. DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations” apply to Applicant’s situation. His delinquent account Accruals 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 accrual of delinquent accounts, 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 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). The Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating good-faith actions taken to resolve delinquent debt and other financial problems. 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).

While late in addressing his delinquent accounts, Applicant has made constructive use of a debt resolution program to address his debt delinquencies and is in compliance with his payment terms, Applicable mitigating conditions are as follows: 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 circumstances"; and 20(d) "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of debt delinquencies is fully compatible with minimum standards for holding a security clearance. Applicant's military and civilian contributions are reinforced by his addressing his delinquent accounts with a post-SOR debt and documenting his compliance with his plan's payment terms. Overall trustworthiness, reliability, and good judgment are established. Based on a consideration of all of the facts and circumstances covered in this case, safe predictions can be made that Applicant will be able to maintain his payment requirements under the terms of his debt resolution agreement and restore responsible control of his finances.

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 holding a security clearance 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-1.e:

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