



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



In the matter of:)
)
-----) ISCR Case No. 22-01535
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2024

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 6, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA 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 December 21, 2022, and requested that his case be resolved on the written record without a hearing. Applicant received the FORM on April 14, 2023, and responded to the FORM with a post-FORM submission. This case was assigned to another judge on July 17, 2023, and reassigned to me on June 10, 2024. The Government's case consisted of eight exhibits and were admitted without objection as Items 1-8. Applicant's post-FORM submission consisted of a closing summary, which was admitted without objection as Item 9.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated nine delinquent debts (student loan and consumer debts) exceeding \$120,000. Allegedly, Applicant's delinquent debts have not been resolved and remain outstanding.

In Applicant's response to the SOR, he admitted most of the alleged student loan debts (leaving blank the allegations of SOR ¶ 1.a) with explanations. He claimed his email communications with his Department of Education (DoE) student lender ceased seven years ago, and he will be filing for "Borrower Defense Loan Discharge (claiming he has been defrauded by his educational institutions."

Addressing his other debts, he denied most of them, claiming they are no longer listed in his credit reports. He admitted the medical debts covered by SOR ¶¶ 1.m, 1.q, and 1.r-1.s, and claimed he will pay these debts if he cannot resolve his disputes with his insurance company. Responding generally to the allegations, he claimed to have no financial hardships and will work to clear his debt issues.

Findings of Fact

Applicant is a 65-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 married in July 1983 and divorced in November 1988. (Item 3) He has two children from this marriage. He remarried in August 2000 and divorced in December 2000 with no children from the marriage. (Item 3) He remarried for the second time in January 2002 and has one child from this marriage. (Item 3) Applicant earned a bachelor's degree in December 2009 and a master's degree in March 2012. (Items 3 and 8) He enlisted in the Air Force in 1981 and served four years of active duty. (Item 3) He received an honorable discharge in August 1985. (Items 2-3)

Since February 2021, Applicant has been employed by his current employer as a project manager. (Items 3 and 8) Previously, he worked for other employers in various support positions. He reported unemployment between March 2020 and February 2021. Applicant held a security clearance at the secret level for the five years of his Air Force enlistment. (Item 3)

Applicant's finances

Applicant financed his undergraduate and graduate education classes with the aid of student loans from the DoE. For these years in classes, he originated nine DoE loans exceeding \$120,000. (Items 4-5 and 8) He never addressed any of these student loans after completing his college classes, and they became delinquent in excess of \$120,000. (GEs 4-5 and 8)

Besides his student loans, Applicant accumulated 11 delinquent consumer and medical accounts between 2011 and 2021. (Items 4-6) and 8. These debt delinquencies were opened as joint accounts with his current wife and exceed \$15,000. (Items 3-6 and 8) Claiming unawareness of these joint accounts, he has not addressed them to date. In his personal subject interview (PSI), he told the interviewing investigator that the accounts will fall off his credit report after May 2023, and he has no intention of paying the balance. (Item 8)

In his stated objection to the developed facts of the FORM, Applicant assured that he is not financially overextended and has always “abided with the law, rules, and regulations.” (Item 9) He attributed his student debt delinquencies to lies and deceptions by his educational institutions about his student loan obligations and payment responsibilities. (Item 9) He pledged to address his debts through a debt resolution firm and pay them off either by consolidating his debts or “working out an affordable payment plan.” (Item 9)

Once his medical bills are fully reviewed by his medical insurance carrier and assigned payment responsibility, Applicant assured he will pay those delinquent medical balances found to belong to him. (Item 9) Applicant provided no attachments to document his claims and assurances.

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 delinquent debts that raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly. These concerns are addressed below.

Financial concerns

Applicant’s accumulated delinquent debts warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶¶ 19(a), inability to satisfy debts”;19(b),” and 19(c), “a history of not meeting financial obligations”; apply to Applicant’s situation. His admitted debt delinquencies 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 debt delinquencies are fully documented and create judgment issues 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. 14-00221 at 2-5 (App. Bd. June 29, 2016). ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015).

Without any documented evidence of Applicant's resolving his debt delinquencies with payoffs and payment plans or good cause demonstrated for why these debts have not been resolved, none of the potentially available mitigating conditions are available to Applicant. In the past, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to back taxes 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).

Applicant's expressed commitments (both in his SOR response and PSI) to address his still outstanding accounts with promised payments, while encouraging, represent no more than promises to resolve his still outstanding debts and are not viable substitutes for a track record of paying debts in a timely manner and otherwise acting in a responsible way. See ISCR Case No. 17-04110 at 4 (App. Bd. Sept. 26, 2019); ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008) Promises to pay or otherwise resolve delinquent debts in the future have never been considered by the Appeal Board to be good substitutes for a meaningful track record of paying debts in a financially responsible manner. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019). And, debts remain relevant for security clearance purposes even if they are no longer enforceable due to the running of a state's statute of limitations. See ISCR Case No. 15-01208 at 2 (App. Bd. Aug. 26, 2016)

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of accumulated delinquent accounts is fully compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for his work in the defense industry, his efforts are not enough at this time to overcome his repeated failures or inability to address his debts in a timely way. Overall trustworthiness, reliability, and good judgment have not been established.

Based on a consideration of all of the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake reasoned, 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.

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.t:

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