



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



In the matter of:)
)
-----) ISCR Case No. 23-00226
)
Applicant for Security Clearance)

Appearances

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

08/15/2024

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 February 28, 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 March 20, 2023, and requested a hearing. This case was assigned to me on February 20, 2024. A hearing was scheduled for May 7, 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 three exhibits (AEs A-C), which were admitted without objection. The transcript (Tr.) was received on May 16, 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 updated payment information. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond. Applicant did not supplement the record.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated 13 delinquent student loan debts, and eight delinquent consumer debts, exceeding \$75,000. 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 his student loan obligations are currently in federally-authorized pause. He also claimed that the debt covered by SOR ¶ 1.u arose out of Applicant's abrupt departure from his apartment due to a family emergency.

Findings of Fact

Applicant is a 33-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 never married and has no children. (GE 1; Tr. 34-35) He earned a bachelor's degree in June 2017. (GE 1; Tr. 35-36, 39) He reported no military service.

Since June 2022, Applicant has been sponsored as an analyst, but has not worked for the employer while he waits for his security clearance approval. (GE 1; Tr. 50-55) To sustain himself, he has worked for another firm since March 2023 that does not require a security clearance. (Tr. 52-53)

Between August 2022 and March 2023, he worked for and was sponsored by the same company who currently sponsors him for a security clearance. (GE 1; Tr. 53-54) Previously, he worked for other employers in various jobs. (GE 1; Tr. 50-51) He

reported extended unemployment between August 2010 and July 2017. (GE 1) Applicant has never held a security clearance. (GE 1)

Applicant's finances

Between September 2010 and September 2018, Applicant accumulated 13 delinquent student loans exceeding \$69,000. (GEs 2-5; Tr. 43) These loans became due in 2018, and were not voluntarily addressed by Applicant before they became delinquent and subject to wage garnishment. (Tr. 40) Based on his best estimates, his wages were garnished for a six-month period in 2019-2020. (Tr. 41) Applicant's claims of receiving a three-year deferment were never documented. (Tr. 40)

For the period spanning 2018 and 2020, Applicant made no voluntary payments of his own before his loans were paused by the Department of Education (DoE) in 2022. (GEs 2-5; Tr. 40-41) In March 2024, Applicant entered his student loan lender's fresh start program. (AE B) Terms of payment have not been set and are not expected to be set before the Fall of 2024. (AEs B-C; Tr. 41, 56) In the interim, Applicant has made no student loan payments while he continues to wait for his lender to set income-based monthly amounts of payment on the loans. (Tr. 43-44, 60) Unclear is whether his student loans continue to accrue interest during the pause. (AEs B-C; Tr. 43)

Besides his delinquent student loans, Applicant accumulated eight delinquent consumer debts exceeding \$6,000. (GEs 2-5). These debts are comprised of the following: SOR ¶¶ 1.n (a charged-off credit card debt for \$2,361); 1.o (a consumer debt for \$24); 1.p (a rental debt for \$705); 1.q (a credit card debt for \$2,698); 1.r (a fire insurance debt for \$177); 1.s (a consumer debt for \$160); 1.t (a consumer debt for \$160); and 1.u (a consumer debt for \$964). (GEs 2-5; Tr. 21-34) Applicant furnished no good-faith explanations for his payment delays.

To date, Applicant has not addressed most of his delinquent consumer debts. (GEs 2-5; Tr. 27-28) Only the \$705 rental debt covered by SOR ¶ 1.p has Applicant addressed and satisfied. (AE A; Tr. 21, 24-25) Of the remaining consumer creditors he reached out to, none have been willing to work out payment plans with him. (Tr. 27) Applicant reported no financial counseling. (Tr. 44) He currently makes \$12 an hour with his current employer and expects to make \$37,000 annually with the employer who currently sponsors him. (Tr. 39) With his present job, he generally works a 37-39 hour work week and barely breaks even with his expenses. (Tr. 65) To help him make ends meet, he continues to look for a second part-time job.

With his currently available resources and lack of a security clearance, it remains unclear whether he is in a position to make any material progress in addressing either his student loans or other debts. (Tr. 41-42, 47, 65) He has not yet 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) Encouraging are Applicant's current status with his remaining debts and his promises to address his delinquent accounts once he receives his security clearance. (GEs 2-4; Tr. 47)

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 13 delinquent student loan accounts and eight consumer account delinquencies. 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 to no income shortfalls since 2017 as factors contributing to his past debt delinquencies. He has avoided any breaks in employment since 2017 and has been financially positioned to address his debts. What has prevented him from paying on his student loans before they were paused in 2024 and addressing most of his consumer creditors is unclear.

Available mitigating conditions (MCs) under Guideline F are 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 date to resolve his SOR-listed student loans and other debts through payments and payment plans before his student loans were paused, 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 paying on his delinquent student loan accounts before they were paused and addressing his remaining delinquent consumer accounts with payments and payment plans, favorable resolution of Applicant’s financial situation

cannot be reached. The fact that Applicant's student loans are currently in DoE pause status does not excuse his pre-deferment failures to address his loans once they became due and fell into delinquent status.. ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021).

Well-intentioned promises alone 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 to satisfy Appeal Board guidance associated with the good-faith and responsible payment and dispute requirements of MC ¶¶ 20(b), 20(d), and 20(e). See ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019).

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 to some degree by his lengthy period of unemployment over a course of many years (reportedly spanning 2010 through 2017) and his current inability to find well-paying work while he awaits his security clearance. However, he has continued to be fully employed (even with reduced income) and positioned to make measurable progress in addressing his delinquent student loan and other accounts before his student loans were paused. Taking into account his credited defense contributions and his extenuating circumstances associated with his reported lengthy 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, Applicant's 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 more documented evidence of good-faith efforts to address them with the resources available to him.

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.o, 1.q-1.u: Against Applicant

Subparagraph: 1.p:

For 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