



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



In the matter of:)
)
 _____) ISCR Case No. 23-02948
)
 Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2024

Decision

WESLEY, ROGER C., Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, 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 May 6, 2024, 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 July 14, 2024, and requested that his case be resolved on the written record without a hearing. Applicant received the FORM on August 21, 2024, and did not respond to the FORM with any post-FORM submissions. This case was assigned to me on November 26, 2024. The Government's case consisted of six exhibits and were admitted without objection as Items 1-6.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to file his federal and state income tax returns for at least tax years 2016 through 2019; (b) is indebted to the Federal Government for delinquent taxes in the approximate amount of \$30,212; (c) is indebted to his state of residence for delinquent taxes in the approximate amount of \$6,688; (d) accumulated eight delinquent consumer accounts exceeding \$76,000; (e) misused a government-issued travel card in 2019, for which he was reprimanded; and (f) used Veterans Administration (VA) GI Bill funds in 2017 to pay for rent and living expenses, rather than education expenses, and as a result had his wages garnished in 2022 to recover the funds. Allegedly, Applicant's tax filing lapses and delinquent debts have not been resolved and remain outstanding.

In Applicant's response to the SOR, he admitted most of the allegations (denying only the allegations covered by SOR ¶ 1.i). He claimed he has set up payment plans with some of his consumer creditors. He claimed, too, that he has faced significant challenges following a debilitating divorce, but for the past five years he has dedicated his entire days to rebuilding his life. He also claimed that he is doing everything he can to pay off his debts while maintaining a healthy, sustainable life. He further claimed that he has served his country and has sworn on oath to protecting his country. And, he claimed that a security clearance is required for his current position.

Findings of Fact

Applicant is a 45-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 April 2004 and divorced in September 2017. (Item 2) He has no children. He earned a high school diploma in May 1994. Applicant enlisted in the Air Force in November 2002 and served five years of active duty. (Item 2) He enlisted in his state's Air National Guard in January 2007 and served 15 years in the active reserves of his Guard unit before receiving an honorable discharge in April 2022. (Item 2)

Since August 2021, Applicant has been employed by his current employer as a site security manager. (Item 2) Contemporaneously with his primary employment, he has worked as a contractor for another company since September 2022. He has held a security clearance since November 2002 and could not be certain whether his clearance was ever suspended in 2021. (Items 2-3)

Applicant's finances

Tax records document that Applicant did not file his federal and tax returns, as required, for tax years 2016 through 2019. (GEs 1-4) Tax records further document that Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$30,212, and to the tax enforcement agency of his state of residence in the amount of \$6,688. (Items 3-4)

Applicant provided no documentation of steps he has taken to either pay or otherwise favorably resolve his tax filing and payment lapses. The tax transcripts covered in the record do not contain any filing extensions for any of Applicant's federal and state tax returns in issue.

Between 2017 and 2022, Applicant accumulated six delinquent credit card accounts exceeding \$39,000. (Items 4-5) These debts are covered in the SOR as follows: ¶¶ 1.d for \$22,003; 1.e for \$12,145; 1.f for \$2,603; 1.g for \$2,433; 1.h for \$388; and 1.i for \$263. (Items 5-6) To date, Applicant has made no documented payments or entered into any documented payment plans on these SOR debts.

Besides accruing delinquent debts, Applicant used his government-issued travel card to cover non-authorized expenditures. (Item 3) Applicant acknowledged his misuse of his state National Guard travel card in 2019 to cover his personal rent in anticipation of an appointment to a new position and the securing of a new lease. (Item 3) He was reprimanded by his Guard unit for his travel card misuse.

At the time in 2019, Applicant was not on orders, and when the promised new position did not materialize, he lacked the income to pay the rent on his newly leased apartment. (Item 3) When his misuse of a government-issued travel card was discovered in May 2020, he was issued a letter of reprimand by his national guard unit in the form of a written enlisted performance report and ordered to repay the \$3,609 in misused government funds. (Item 3)

In a previous misuse incident in 2017, Applicant was charged by the VA with using a GI Bill payment for rent and living expenses instead of applying the GI Bill payment to his school tuition. (Item 3) To recover its owed \$6,307 funds, the VA initiated garnishment proceedings in January 2023 and has continued to garnish Applicant's wages on a bi-weekly basis at the rate of \$663 a week until paid. (Item 3) Whether the misused VA travel funds have been fully repaid is unclear. Applicant did not provide any updates on the status of his VA wage garnishment.

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 timely file his federal and state tax returns for tax years 2016 through 2019, as required. His multiple tax-filing lapses raise trust, reliability, and judgment concerns about his current and future ability to manage his finances safely and responsibly. Additional security concerns are raised over Applicant's accumulation of six delinquent consumer debts, his misuse of a government-issued travel card, and his misuse of GI Bill funds.

Financial concerns

Applicant's multiple federal and state tax-filing lapses for tax years 2016-2019 and owed taxes for the tax years in issue, his accumulated delinquent consumer debts, and his repeated misuse of his government-issued travel cards in 2017 and 2019, respectively, warrant the application of four 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"; 19(d), "deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust"; 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 admitted tax-filing failures, delinquent debt accumulations, misuse of an issued government travel card, and misuse of GI Bill funds 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, debt delinquencies, misuse of a government-issued travel card, and misuse of GI Bill funds 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 Applicant's tax-filing lapses, accumulated debt delinquencies, misuse of federal and state tax returns, his six individual debt delinquencies, and his two prior instances of misuse of government funding vehicles (SORs ¶¶ 1.a-1.k) 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); and ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 5, 2002).

Without any documented evidence of Applicant's timely resolving his federal and state tax-filing failures, his individual debt delinquencies with payoffs and payment plans, and convincing commitments to avoid travel card and GI Bill funding abuses in the future, none of the potentially available mitigating conditions are available to him. In the past, the Appeal Board has 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 to address his federal and state tax-filing lapses, outstanding delinquent accounts with promised payments, and avoidance of misuse of government travel card and GI Bill funding abuses in the future, while encouraging, lack the needed documentation to corroborate his assurances. Expressed payment commitments without proper documentation represent no more than promises to resolve his still outstanding tax-filing lapses, delinquent accounts, and misuse issues, 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).

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of tax filing failures, accumulated delinquent accounts, and multiple instances of travel card and GI Bill funding misuse 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 timely file his federal and state income tax returns, address his debts in a timely way, and avoid the misuse government-issued travel cards and GI Bill funding. 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 documented 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.k:

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