



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



In the matter of:)
)
 _____) ISCR Case No. 23-02914
)
 Applicant for Security Clearance)

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

12/03/2024

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 February 2, 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 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 February 15, 2024, and requested a hearing. This case was assigned to me on July 1, 2024. A hearing was scheduled for July 19, 2024, and was heard as scheduled. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4) Applicant relied on one witness (herself) and no exhibits. The transcript (Tr.) was received on July 30, 2024.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documentation of her tax payments. For good cause shown, Applicant was granted 14 calendar days to supplement the record. Department Counsel was afforded three days to respond. Within the time permitted, Applicant supplemented the record with Internal Revenue Service (IRS) summaries of developed information for the tax years in issue and character references.

Summary of Pleadings

Under Guideline F, Applicant allegedly (a) failed to pay federal taxes owed for at least tax years 2018 through 2022; (b) is indebted to the Federal Government for delinquent taxes in the amount of \$10,071 for tax year 2022; (c) is indebted to the Federal Government for delinquent taxes of \$1,171 for tax year 2021; (d) is indebted to the Federal Government for delinquent taxes of \$.02 for tax year 2020; (e) is indebted to the Federal Government for delinquent taxes of \$3,175 for tax year 2019; and (f) is indebted to the Federal Government for delinquent taxes in the amount of \$3,086 for tax year 2018. Allegedly, these delinquent taxes remain unpaid.

In Applicant's response to the SOR, she admitted all of the alleged delinquent taxes owed without any qualifications. She provided no explanations or clarifications.

Findings of Fact

Applicant is a 45-year-old civilian 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. (GEs 1-2) Recently, she broke off a relationship with a person she was cohabiting with for the previous 10 years. (GE 3; Tr. 39) She earned a high school diploma in June 1997 and completed some college classes. (GEs.1-3; Tr. 26) Applicant did not report any military service.

Since May 2023, Applicant has worked for her current defense contractor as a defense travel administrator. (GE 1; Tr. 54-55) Previously, she worked for other employers in various job capacities. She has held security clearances between 2008 and 2024. (GE 1; Tr. 24-27)

Applicant's finances

Records document that Applicant accumulated delinquent tax debts for tax years 2018 through 2022 as follows: (b) \$10,071 for tax year 2022; (c) \$1,171 for tax year 2021; (d) \$.02 for tax year 2020; (e) \$3,175 for tax year 2019; and (f) \$3,086 for tax year 2018. (GE 4 and AE A) Total federal taxes owed for tax years 2018 through 2022 exceed \$17,000. (GEs 2-4)

Applicant attributed her tax delinquencies to excessive exemptions taken on her tax returns to cover her medical bills. (Tr. 35-38) Aware of her owed federal taxes for tax years 2018-2019, she executed installment agreements with the IRS for these tax years. (GE 2) She permitted these agreements to lapse, however, without any documented payment progress. (GEs 2-4) Tax transcripts covering tax years 2020-2022 do not report any installment agreements executed by Applicant for those tax years.

To her credit, Applicant made some payment progress on her tax delinquencies without the aid of installment agreements. (AE A) Her IRS tax summaries document several payments on her delinquent tax debts for the tax years in issue. Her post-hearing submissions document \$100.71, \$65.51, and \$19 payments for taxes owed for tax year 2020, a payment of \$49.87 for tax year 2019, and a payment of \$56.51 for tax year 2018. (AE A)

Altogether, Applicant has made documented payments on her delinquent taxes owed for tax years 2018-2022 totaling close to \$300. (AE A) Still delinquent and unresolved are federal taxes owed by Applicant for tax years 2018-2022 that exceed \$16,000. (GEs 2-4) Without installment agreements or other payment plans in place for the tax years in issue, predictable payment outcomes cannot be made. (GEs 3-4 and AE A)

Applicant is current with all of her other debts and earns \$100,000 annually. (Tr. 28-29) She has a 401(k)-retirement plan that she contributes to bi-weekly. (Tr. 29) After covering her monthly expenses, she has retained a monthly remainder of \$800. (Tr. 31-32) She has a small savings account that currently holds around \$700 and uses her monthly remainder to pay off other bills. (Tr. 33)

Endorsements

Applicant is well-regarded by her DoD travel director, travel supervisors, and friends. (AE C) All of her character references credit her with trustworthiness, reliability, compassion, and exhibited discipline under stressful conditions.

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. 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 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:

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 taxes over the course of many years (2018-2022). Her accrual of delinquent federal taxes raise trust, reliability, and judgment concerns about her current and future ability to manage her finances safely and responsibly.

Financial concerns

Applicant's multiple tax-payment lapses warrant the application of one of the disqualifying conditions (DC) of the financial consideration guidelines. DC ¶ 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," applies to Applicant's situation.

Applicant's admitted federal tax delinquencies require no independent proof to substantiate them. See Directive 5220.6 at E3.1.1.14; *McCormick on Evidence* § 262 (6th ed. 2006). Her admitted tax-payment failures are fully documented and create judgment issues as well over the management of her 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 payment 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). Without sufficient evidence of Applicant's fulfilling her responsibilities of paying off or otherwise resolving her documented federal tax delinquencies for the years in issue (2018-2022), none of the potentially available mitigating conditions are available to her.

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, consumer, medical, 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).

Whole-person assessment

The whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of multiple years of accrued tax payment

deficiencies is compatible with minimum standards for holding a security clearance. While Applicant is entitled to credit for her work in the defense industry, her efforts are not enough at this time to overcome her repeated failures or inability to address her federal tax-paying responsibilities in a timely way. Overall trustworthiness, reliability, and good judgment have not been established.

Applicant's past failures to timely address her federal tax payment responsibilities reflect adversely on her ability to maintain her finances in a sufficiently stable manner to meet the minimum requirements for holding a security clearance. 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 her to establish the requisite levels of stability with her finances to establish her 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.f:

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