



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



In the matter of:)
)
) ISCR Case No. 23-01616
)
Applicant for Security Clearance)

Appearances

For Government: John Renehan and Brittany White, Esq., Department Counsel
For Applicant: *Pro Se*

05/16/2024

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 August 25, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudication 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), as amended; 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 20, 2023, and requested a hearing. This case was assigned to me on February 20, 2024. A hearing was scheduled for April 12, 2024, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of seven exhibits, which were admitted into evidence without objection. (GEs 1-7) Applicant relied on one witness (himself) and no exhibits. The transcript (Tr.) was received on April 19, 2024.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated six delinquent debts exceeding \$18,000. Allegedly, his delinquent accounts have not been resolved and remain outstanding.

In his response to the SOR, Applicant admitted all of the alleged debts. He added no explanations or clarifications.

Findings of Fact

Applicant is a 52-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 married in October 2015 and has no children from his marriage. (GE 1; Tr. 27) He earned a high school general education diploma (GE D) in 2011 and attended college classes for two semesters without earning a degree or diploma. (GE 1; Tr. 28) Applicant enlisted in the Army's Inactive Reserve in January 2013 and served three months before receiving a medical discharge in April 2018. (GE 2; Tr. 26-27)

Since March 2021, Applicant has been employed as a manufacturing team member associate. (GE 1; Tr. 22) Previously, he worked for other employers in various jobs. (GE 1) He reported brief unemployment between April 2013 and July 2013. (GE 1) He has never held a security clearance. (GE 1)

Applicant's Finances

Between 2015 and 2021, Applicant accumulated six delinquent consumer debts exceeding \$18,000. (GEs 2-7) The SOR-alleged debts are: SOR ¶¶ 1.a (a charged-off general services loan for \$10,053); 1.b (a charged-off credit-card account for \$3,372); 1.c (a charged-off credit-card account for \$1,447); 1.d (a charged-off credit-card account for \$1,266); 1.d (a collection consumer account for \$944); and 1.f (a past due credit-card account for \$5,827). Applicant attributed his debt delinquencies to unemployment and a cascade of other financial problems that caused him to fall behind with the timely servicing of his debts. (Tr. 45)

Applicant ceased paying on his debts in 2021 and has since failed to initiate any payment arrangements with his creditors (with the exception of SOR creditor 1.b) since

receiving the SOR in August 2023. (GEs 2-7; Tr. 33-44) Only with respect to SOR creditor 1.b has he taken any concrete steps to resolve his outstanding accounts. (Tr. 33-34) After completing his July 2022 e-QIP, he worked out payment arrangements with SOR creditor 1.b and has been making monthly checks of \$200 to the creditor. (Tr. 37)

Applicant nets \$5,000 a month and currently benefits from his wife's income from her new job that nets her about \$1,100 to \$1,200 a month. (Tr. 46, 59) Applicant's only other source of come is his state pension (20,000 annually) that he uses to pay other debts. (Tr. 50-51) After accounting for household expenses (inclusive o his mortgage and payment), he estimates a monthly remainder of between \$1,100 and \$1,200 a month. (Tr. 47)

Applicant has no other sources of income available to him to address his remaining debts and has not pursued any form of financial counseling. (Tr. 50-53) With his wife now working and his finances improving, he hopes to be able to better address his delinquent accounts. (Tr. 55-59)

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 reported accumulation of six delinquent debts exceeding \$18,000 (mostly credit card accounts). 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 his brief periods of unemployment and other unexplained financial problems as reasons why he could not address his debts earlier. Partially applicable mitigating conditions (MC) include 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 debt." Because Applicant did not satisfy either the second prong of MC ¶ 20(b) ("acted responsibly under the circumstances") or the good faith payment and resolution requirements of MC ¶ 20(d) for all of Applicant's SOR-listed debts, neither mitigating condition can be fully applied to Applicant's situation.

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).

Well-intentioned promises by Applicant to address his delinquent when his resources permit, while encouraging, 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 requirements of MC ¶¶ 20(b) and MC 20(d).

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 longstanding and slow to abate. Taking into account his credited defense contributions, his extenuating circumstances associated with his brief periods of unemployment, and his to timely address his accounts when they became due, he is credited with demonstrating some encouraging progress in addressing his debts and regaining control of his finances. However, without a better track record of responsible, good-faith, payment initiatives (both pre-dating and post-dating the issuance of the SOR), his efforts to date fall short of the level of financial responsibility required to demonstrate the regaining 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 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 and 1.c-1.f:

Against Applicant

Subparagraph 1.b:

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