



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



In the matter of:)	
)	
)	ISCR Case No. 18-00517
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2019

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. He failed to provide sufficient documentation to establish mitigation with respect to his student loan debts and delinquent federal taxes. National security eligibility for access to classified information is denied.

Statement of the Case

On April 9, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), implemented effective June 8, 2017.

Applicant submitted an Answer to the SOR on May 7, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted its file of relevant material (FORM) on June 6, 2018. Applicant received it on June 15, 2018. The Government's evidence is identified as Items 1 through 6. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted a one-page response to the FORM (Response). Items 1 through 6 and the Response are admitted into the record without objection. The case was assigned to me on January 8, 2019.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 29 years old. He is a high school graduate, and attended some college classes between 2007 and 2010. He has worked for his employer, a federal contractor, since October 2016. He is unmarried and has a ten-year-old child. He is current on his child support obligation. (Item 2.)

Applicant was employed from 2012 to 2016 as a forklift operator. Before that, he worked in retail from 2008 to 2012. He also worked at a fast food restaurant in 2008. These jobs were low paying positions and did not afford him sufficient income to repay his student loans that he incurred while attending college. (Item 2; Item 3.)

Applicant is alleged to be indebted on 11 delinquent student loan accounts (SOR ¶¶ 1.a-1.d, and 1.f-1.l) owed to the U.S. Department of Education, totaling \$32,442. He presented a payment agreement with a collection agency for the U.S. Department of Education dated April 26, 2018, with his Answer to the SOR. That letter authorized recurring payments to be withdrawn from his account, but did not state a payment amount or otherwise document any payments were made under that agreement. In Applicant's Response, he indicated that he consolidated his delinquent student loans into one account and that since April 2018, he has remitted \$22 per month as required in the repayment agreement. His June 5, 2018 credit report reflects multiple accounts owed to the Department of Education as past due with the date of last payment as April 2018. It is unclear if he made any payments after his the April 2018 payment, which was presumably the first payment under his repayment agreement. His June 5, 2018 credit report also shows multiple other student loans were transferred or sold. Applicant did not provide enough evidence to establish a track record of responsibility for these delinquent student loan accounts. These debts are unresolved. (Answer; Response; Item 3; Item 4; Item 5; Item 6.)

Applicant also owes approximately \$2,812 (SOR ¶ 1.e) to the university he attended for another student loan. His Answer and Response indicate that all of his student loans have been "consolidated into one monthly payment plan" but there is no evidence that indicates this debt was included in that agreement. This debt became

delinquent in 2011. It is identified on his June 5, 2018 credit report as past due and no recent payments are reflected. This debt is unresolved. (Answer; Response; Item 3 at 7; Item 4; Item 5; Item 6.)

Additionally, Applicant is indebted to the IRS in the amount of \$5,284 for tax years 2014, 2015, and 2016, as alleged in SOR ¶ 1.m. He filed his tax returns for those years in a timely manner, but had insufficient funds to pay the balance owed. Tax transcripts for those tax years reflect that he established an installment agreement with the IRS to resolve his delinquencies in April 2017, but was no longer in installment status in March 2018. (Item 3.) He documented that he re-engaged the IRS in April 2018 and established a new agreement to pay \$64 per month. (Answer.) In his Response, he indicated he was current with that agreement, but provided no documentation to show a track record of payments under that agreement.

Applicant's June 5, 2018 credit report reflects that he has an additional delinquent account, owed to a payday-loan vender in the amount of \$616. (Item 6.)¹ He admitted this debt in his Response and explained: "In my current financial situation, I am living 'paycheck to paycheck', meaning, after I am finished paying my monthly rent and utilities and other expenses that are required raising my son, I am not left with extra funds." Despite his shortfall, he intends to pay all his delinquent debt when he is able. (Response.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

¹ These debts were not alleged on the SOR and are not considered under the disqualifying conditions, below, but are appropriate to examine when analyzing mitigation.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern under the financial considerations guideline is set out in AG ¶ 18:

Failure 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 and 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 or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant has over \$35,000 in delinquent student loan debt, plus over \$5,000 in delinquent tax debt. He has been delinquent on his student loans since at least 2011. Despite being fully employed since 2016, he has insufficient income to address these liabilities. There is sufficient evidence to establish disqualification under AG ¶¶ 19(a), 19(c), and 19(f).

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has insufficient income to meet all of his financial obligations. He has incurred additional delinquent debt, not alleged in the SOR. There is no evidence that he will be able to avoid delinquent accounts in the future. He remains indebted for federal taxes and student loans. His debt is ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to underemployment. That is a circumstance beyond his control. However, he has been fully employed since 2016, and continues to be unable to meaningfully address his delinquent accounts. The record lacks documentation to show he reasonably and responsibly addressed his delinquencies. Mitigation under AG ¶ 20(b) is not fully established.

Applicant provided no documentation of financial counseling. There is minimal evidence to conclude that his financial problems are under control. He has established payment agreements with the collection agent for the majority of his student loans and with the IRS. However, he did not provide documentation to demonstrate a track record of payments in accordance with those agreements. The evidence does not establish full mitigation under AG ¶¶ 20(c) or 20(d).

Applicant did not claim to dispute any of his alleged delinquencies. AG ¶ 20(e) does not apply.

Applicant has established an installment agreement to resolve his federal tax liabilities. However, he defaulted on a previous installment agreement. He failed to meet his burden to establish compliance with his current repayment agreement, beyond his bare averment. Documentation of compliance with those arrangements is necessary. AG ¶ 20(g) does not mitigate the security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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 for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is credited with his recent efforts to make payment arrangements to resolve his delinquencies with his limited income. However, he failed to support his statements with proof of concomitant action. He has no track record of payments to his creditors and his most recent credit report reflects a new delinquent account. He may be eligible for national security eligibility in the future if he is able to document reasonable and responsible actions to maintain solvency. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F.

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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge