



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



In the matter of:)	
)	
)	ISCR Case No. 18-00563
)	
Applicant for Security Clearance)	

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 4, 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 6, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on December 4, 2018. The Government's evidence is identified as Items 1 through 6. Applicant was

afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on February 27, 2019.

Findings of Fact

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

Applicant is 32 years old. He began college in 2006 and graduated in May 2012 having earned a bachelor's degree. He married in 2013. He has no children. Applicant has been employed by a federal contractor since October 2016.

The SOR alleged that Applicant has approximately \$156,322 in delinquent student loans (SOR ¶¶ 1.a through 1.g). He stated in his October 2016 security clearance application (SCA) the following:

I attended a private university. With little financial literacy, I took out private and government loans that I couldn't hope to pay. Since leaving college, I've been unemployed and haven't been able to secure a job that paid more than \$13.25 an hour. The defaulted loans are a consequence of my inability to secure adequate wages given my college education and my inconsistent employment history. I wish the story was different but those are the facts.¹

* * *

My Federal Student Loans tally to approximately \$51,988. My private loans are approximately \$177,683.²

Regarding the debts alleged in SOR ¶¶ 1.h (credit card debt-\$1,189), 1.k (medical debt-\$119), 1.l (medical debt-\$63), and 1.j (cell phone debt-\$198), Appellant stated in his SCA the following:

The credit card was a simple issue of non-repayment. It's been closed and written off. The other three collection issues are still pending and total \$380 dollars. One is a cancellation fee, the other is a fee for an urgent care trip that I thought was resolved a long time ago and the last one is a fee that was supposed to be paid by my previous employer when I was forced to visit the ER within the hospital I was working at.

* * *

¹ Item 3.

² Item 3.

The [credit card] charge has been written off and charged off as a bad debt. The other three are still open in collections.³

* * *

The open collection accounts are simple to resolve. \$380 dollars will take care of that. The [credit card debt] issue has been resolved.⁴

Applicant was interviewed by a government investigator in November 2017. He was confronted with the delinquent student loans alleged in SOR ¶¶ 1.a through 1.e. He told the investigator these were private student loans, and he cannot afford to pay them because he does not earn enough income. The creditor offered to settle the debt for a lump sum amount of \$63,000, but Applicant could not afford it. He has no plans to resolve these loans because he cannot afford to make the monthly payments required.⁵

Applicant was not sure if the student loans alleged in SOR ¶¶ 1.f and 1.g were private student loans or government loans. He stated his government student loans were in a rehabilitation program, and he did not know if the loans in SOR ¶¶ 1.f and 1.g were part of that program. He said he could not pay these loans because he does not earn enough income.⁶

Applicant told the investigator that he intended to pay the debt in SOR ¶ 1.l by December 2017. He said that he would contact the creditor for the debt in SOR ¶ 1.k in December 2017, to discuss it. He said he contacted the creditor for the debt in SOR ¶ 1.j and would call the creditor again in December 2017, to try and resolve it. Regarding the credit card debt in SOR ¶ 1.h, he did not plan on contacting the creditor to resolve it because he cannot pay this debt and his federal student loans at the same time. Applicant did not provide any documents or other information regarding his efforts to resolve these smaller debts.⁷

The investigator confronted Applicant with the charged off debt in SOR ¶ 1.m (\$2,200). This was a loan he used to purchase his wife's engagement ring. He indicated that because he had inconsistent employment, he was unable to pay this loan. Due to his current plan to pay his federal loans, he does not have sufficient funds to resolve this debt.⁸

³ Item 3.

⁴ Item 3.

⁵ Item 4.

⁶ Item 4.

⁷ Item 4.

⁸ Item 4.

Applicant was employed from October 2015 to September 2016 before starting his current job. He disclosed that he worked as a camp counselor during the summers (June through August) while in college from 2009 to 2012, and then continued during the summers through 2016. He lists other employment from September 2014 to February 2015 (he left this job because it was a temporary job for six months); October 2013 to May 2014 (he left this job to work at summer camp); November 2012 to December 2012 (he quit this job because it did not suit him).⁹

Applicant disclosed to the investigator that he and his wife took a five-day cruise in August 2017 to the Bahamas. He and his wife also took a five-day cruise to Jamaica and Cayman Islands in May 2014.¹⁰

Applicant's admissions and credit reports from January 2017 and February 2018 corroborate all of the debts alleged in the SOR. Applicant did not provide any information about his and his wife's current income; documents to substantiate he is paying his federal student loans; a budget; or proof that he resolved the smaller debts.¹¹

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines 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 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.

⁹ Items 3, 4.

¹⁰ Items 3, 4.

¹¹ Items 2, 3, 4, 5, 6.

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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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.

Section 7 of EO 10865 provides that 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 relating to the guideline for financial considerations 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;

- (b) unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent student loans, credit card debts, medical debts, and other debts totaling more than \$160,000. He is unwilling and unable to pay his delinquent debts. Despite stating he would address the small debts, he failed to provide proof that he did. He does not intend to resolve his private student loans and other debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not paid or provided evidence of action he may have taken to resolve any of the delinquent student loans or other debts that are charged off or in collection. His delinquent debts are recent and ongoing. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to unemployment and underemployment. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant did not provide sufficient evidence to show he has acted responsibly under the circumstances. Applicant attended college for six years and obtained student loans to pay for his education. He was aware of the amount of the loans he was using for his education. Although he said his federal student loans are in a rehabilitation program, he failed to provide evidence to substantiate his claim. He has decided that the amount owed for his private student loans is too much to pay; however, he and his wife took a cruise in 2014. Applicant has been employed since October 2015. He has not made an effort to pay a \$63 medical bill or the loan he

obtained to purchase his wife's engagement ring. After he completed the SCA in October 2016, which put him on notice that his delinquent debts were a concern, he took a cruise with his wife in August 2017. AG ¶ 20(b) has minimal application.

There is no evidence Applicant has received financial counseling and his debts are under control. There is no evidence he is making good-faith efforts to pay any of debts alleged in the SOR. AG ¶¶ 20(c) and 20(d) do not apply.

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 eligibility for a security clearance 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 32 years old. He has an overwhelming amount of student loans that are delinquent. He indicated he had no hope of paying them. He indicated that he is paying his federal student loans, but provided no evidence. He has not paid small consumer debts, including a loan for his wife's engagement ring. He did not provide evidence of any action he has taken to resolve, settle, or pay these debts. Applicant did not provide evidence of his current financial budget or a plan for resolving his financial problems. Applicant has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's judgment, reliability, and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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

Subparagraphs 1.a-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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge