



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



In the matter of:)
)
) ISCR Case No. 18-00936
)
Applicant for Security Clearance)

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2019

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Concerns). Eligibility for access to classified information is denied.

Statement of the Case

On April 25, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all adjudicative decisions on or after June 8, 2017.

Applicant responded to the SOR on May 22, 2018, and elected to have the case decided on the written record in lieu of a hearing. He admitted all seven of the SOR allegations and provided a two-page narrative statement.

Department Counsel submitted the Government's written case on July 16, 2018, which included six documents (Items 1-6). A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and to submit a written response and documents to refute, extenuate, or mitigate the security concerns raised by the SOR allegations. He provided a written, undated response, which was received by the Defense Office of Hearings and Appeals on August 23, 2018. With his response, he provided nine documents. The Government's exhibits are admitted as GE 1-6. I have marked Applicant's exhibits (AE) as A-I. All documents are admitted without objection. The case was assigned to me on October 11, 2018.

Findings of Fact¹

Applicant's admissions to the allegations set forth in SOR ¶¶ 1.a-1.h are incorporated in my findings of fact.

Applicant is 30 years old, married, and has a young child. He earned a high school diploma in June 2006 and a bachelor's degree in physics in 2010. He had two periods of unemployment after college and a third period of underemployment when he attempted to start a business with a friend that ultimately failed. Since June 2014, he has held three positions and each with better compensation than the one before. He has held his current position with a defense contractor since October 2016. He submitted his pending security clearance application in May 2017 (SCA). He has not held a clearance in the past. (SOR Answer at 2.)

Applicant incurred a significant student loan debt to pay for his college degree. He has attempted to defer the repayment of the loans for as long as possible. His wife is presently pursuing a master's degree in a scientific field. They hope that this degree will help increase her income potential and better position the two of them to pay down his student debts in a responsible manner in the future. He wrote in his SOR answer that he has been making an effort to pay his debts, except when he took a "hiatus to help support [his] family during [his] wife's master's degree." The record is unclear what specific steps he took to pay his student loans before his recent "hiatus." At the same time, he and his wife have started a family and have child-care expenses to pay as well as their ordinary living expenses. (SOR Answer at 1; AE H.)

The SOR contains eight allegations of student loan debts that are delinquent, have been referred for collection or are the subject of a court judgment. The original lenders are three banks, which provided private loans that have, at least in some cases, been assigned to a state agency or the federal government for the purpose of collection. The total principal amount of the delinquent loans alleged in the SOR is about \$65,424. All of the delinquent debts are student loans, according to the Government's credit reports in the record. (GE 5 and 6.) The record contains no indication that Applicant has incurred any consumer or other debts since at least his 2010 college graduation.

¹ Applicant's personal information is extracted from his security clearance application, dated May 26, 2017 (FORM Item 3), unless otherwise indicated by a parenthetical citation to the record.

In his FORM response, Applicant argues that his nine exhibits support his position that he is acting responsibly and is making a good-faith effort to begin to repay his student loans. AE A reflects a payment to a student loan collection agency of about \$281 on July 30, 2018, on two consolidated loans, the largest of which has an unpaid balance of about \$22,400. When combined with the second loan referenced in AE A, the total outstanding debt owed to this creditor is about \$29,690. Applicant does not explicitly explain the connection between this exhibit and the corresponding debts alleged in the SOR. Given the magnitude of the larger debt, a significant portion of this payment of \$281 is possibly a partial payment of the debt alleged in SOR ¶ 1.a, which is his largest student loan debt of \$26,034. No other debt alleged in the SOR is larger than about \$11,000. (SOR ¶ 1.b.) If this payment relates to a different student loan debt, then it was not alleged in the SOR. This payment was made about two months after Applicant received and responded to the SOR.

Applicant's exhibit B is a statement from a student loan collection agency, dated August 21, 2018. This exhibit reflects that the account was placed for collections in November 2017 in the amount of \$2,115, which is the principal amount of the debt alleged in SOR ¶ 1.c. Exhibit B reflects total payments of about \$353 and a current balance of about \$1,763. It does not provide any information as to when the payments were made or in what amounts. The document also reflects an additional, closed student loan from Applicant's college in the amount of \$17,207, which had a zero balance in May 2013. The record is silent as to how this debt was resolved since this student loan was not alleged in the SOR. The Government's evidence references this loan (account no. 360000881100) in the original amount of \$11,000 as being a paid collection, as of May 2013. (GE 5 at 4.)

Applicant's Exhibit C is a receipt of a payment made to a state student financial aid agency. The receipt reflects a payment on August 20, 2018, in the amount of \$285. The following four exhibits are also receipts from the same state agency in the amounts of \$285 bearing the dates of December 13, 2017, January 14, 2018, March 1, 2018, and June 22, 2018, respectively (AE D-G.) Applicant failed to identify which student loan or loans alleged in the SOR are related to these receipts. According to the record evidence, the only SOR debt that is owed to this state agency is the debt alleged in SOR ¶ 1.a. This raises the possibility that the debt addressed by the payment reflected in AE A is a debt that is not alleged in the SOR.

Without a more detailed explanation from Applicant, I can only conclude that his evidence is intended to show that he has made payments on two or possibly more of his student loan debts, whether alleged in the SOR or not. He presents this evidence in support of his claim that he intends to continue paying these debts at this time and intends to pay all remaining debts alleged in the SOR when he has more income available to him in the future

Appellant Exhibit H sets forth his budget without any explanation. He shows a monthly net family income of about \$7,781. He lists his "Required" expenses as totaling

about \$5,099 and his “voluntary” expenses as about \$226. His budget then reflects a remainder for “Discretionary/Savings” as the difference of his net monthly family income and their monthly expenses, *i.e.*, about \$2,682, which is about \$32,184 per year. His budget also provides a “Yearly Net” figure of about \$39,763. This figure is calculated using his monthly numbers with some annual adjustments. The difference between these numbers is not explained by his annual adjustments. It is unclear how he explains the difference in his annual remainder income.

Applicant Exhibit H also set forth a student loan repayment plan in a very summary manner. His plan shows a “year one” debt of \$114,560, which is more than double the total of the student loans set forth in the SOR. This figure suggests that the student loan payment evidenced by AE A was made on a debt that was not alleged in the SOR. Moreover, Applicant’s apparent total debt of \$114,560 supports the possibility that he and/or his wife may have more student loan debts, or other debts, than those alleged in the SOR. At the end of year one, Applicant’s repayment plan shows a remaining figure of about \$40,000 less, *i.e.*, \$74,797. In year two, the plan shows a similar reduction, leaving a remainder of about \$38,431. He shows the remainder of the debt being paid off by the end of year three. (AE H.)

Applicant also submitted with his FORM response his most recent performance evaluation. His evaluating supervisor praised Applicant’s performance and rated him as having a “Substantial Impact” on the company and that Applicant “performed well above expectations.” (AE I.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

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, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's admissions in his SOR Answer and response to the FORM and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. While Applicant's debts arose a number of years ago, they remain delinquent. His failure to address them in any serious manner prior to receiving the SOR in 2018 casts doubt on his current reliability, trustworthiness and judgment.

AG ¶ 20(b) is not established. Applicant assumed this student debt to further his education. Upon graduation from college in 2010, however, he was obliged, to develop a repayment plan. He failed to do so. These circumstances were within his control, and he failed to act responsibly under the circumstances in addressing his student loan debts.

AG ¶ 20(c) is not established. Applicant wrote in his SOR answer that he has not sought financial counseling because he had a simple solution to his problem, which was to pay his debts now that he has sufficient income. The evidence does not support his assertion that he took his own advice and that his problem is being resolved. Absent a

track record of regular payments, it is speculative as to whether Applicant will be successful in paying down all of his debts within three years as he forecasts.

AG ¶ 20(d) is not established. Applicant fails to explain in his FORM response how he intends to actually follow his ambitious debt repayment plan over three years, given his limited payments in the past. He has been unable to make any significant progress rehabilitating and repaying his student loans for the past several years, or at least since October 2016, when he was hired by his current employer. With the apparent exception of a loan from his college, the record evidence reflects that Applicant did not attempt to begin making monthly payments or to rehabilitate his delinquent student loans until December 2017 in one case and sometime in or about 2018 in another. As noted above, AE B does not provide the date when Applicant began to make payments on that second debt. Applicant's failure to address each debt in his FORM response and his repayment efforts for each debt renders his mitigating evidence of repayments unpersuasive. Simply stated, Applicant has not established the requisite track record with respect to his student loans, and it is premature to conclude that he will be able to follow his three-year plan, when he begins to implement his plan.

I conclude that at this time none of the above mitigating conditions apply and that Applicant has not made any serious progress on the SOR debts.

Whole-Person Concept

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. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances and applying the adjudicative factors in AG ¶ 2(d).²

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent student loans.

² The factors are: (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.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a - 1.h: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

John Bayard Glendon
Administrative Judge