



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



In the matter of:)	
)	
DURNELL, Shawn D.)	ISCR Case No. 18-01802
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas T. Temple, Esq., Department Counsel
For Applicant: *Pro se*

03/05/2019

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant continues to have significant federal student loan debts that remain delinquent and increasing. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 15, 2017. On July 3, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations.¹

Applicant answered the SOR on July 30, 2018. He elected to have his case decided on the written record in lieu of a hearing. He provided one document, marked as

¹ The action was taken under Executive Order (Exec. Or.) 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 National Security Adjudicative Guidelines (AG), which became effective on June 8, 2017.

Applicant's Exhibit (AE) A. On August 23, 2018, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. Applicant was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation. Applicant's undated FORM response was received by the Defense Office of Hearings and Appeals (DOHA) on October 4, 2018. He did not object to the Government's evidence.² He included six new documents, marked as AE B – G.³ The SOR and the Answer (Items 1 and 2) are the pleadings in the case. Items 3 through 5 and AE A – G are admitted into evidence without objection.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a - 1.k, with a brief narrative statement. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 32 years old. He married in 2010. He and his wife separated in 2014, though they remain legally married. They have no children. Applicant graduated from high school in 2005. He took online courses from 2011 to 2014, but did not obtain a degree. He has worked for his current employer, a defense contractor, since February 2017. He held his previous job from 2010 to January 2017. (Item 1)

Applicant disclosed on his October 2017 SCA that he had \$62,000 in past-due federal student loans (SOR ¶¶ 1.a – 1.j), and an \$805 overdue local tax debt from 2016. (SOR ¶ 1.k). He said his debts were due to low income. (Item 3)

Applicant noted in his Answer that his tax debt had increased to \$1,200. He made a \$400 payment in August 2018, and intends to continue making payments to resolve the debt. (Answer; FORM Response; AE C; AE D)

Applicant's ten delinquent federal student loans are alleged as SOR ¶¶ 1.a (\$8,049), 1.b (\$4,842), 1.c (\$7,793), 1.d (\$7,680), 1.e (\$8,383), 1.f (\$4,739), 1.g (\$5,869), 1.h (\$4,796), 1.i (\$3,636) and 1.j (\$6,746). They are listed on his October 2017 credit report, and total \$62,533. This is comparable to what Applicant disclosed on his SCA (\$62,081). The credit reports reflect that Applicant received the loans between 2011 and 2014, when he was taking online courses. He reported on his SCA that the student loans had been delinquent since 2013. (Items 1, 3, 4)

² In his FORM Response, Applicant "objected" to certain statements made by Department Counsel in the FORM. I do not construe those comments as formal objections to admission of the Government's evidence.

³ AE A is a July 2018 statement from Applicant's student loan provider. AE B reflects his student loan payments as of September 2018. AE C and AE D concern payments on a local tax debt. AE E is Applicant's student loan rehabilitation agreement, signed August 31, 2018. AE F and AE G are statements from his student loan provider, from August and September 2018.

The principal on Applicant's federal student loans is \$58,364. (AE A, AE F, AE G) As of July 2018, he owed an additional \$6,376 in interest and penalties, plus \$15,757 in fees and costs, for a total balance of about \$80,500. (AE A)

On July 31, 2018, the day after he answered the SOR, Applicant entered into a loan rehabilitation agreement with his loan provider. The agreement noted that his federal student loans were in default. He was to make nine monthly payments of \$5.00 each month to rehabilitate his loans and bring them out of delinquent status. (Answer; AE E) His loans remained delinquent, with increased balances, as of September 2018. (Item 5; AE F; AE G)

Applicant made a \$105 payment on May 1, 2018. He made a \$53 payment on July 17, 2018. He made a \$5.00 payment on August 16, 2018, and another \$5.00 payment on September 18, 2018. All of Applicant's payments were applied to interest and fees, and not to the principal on the loan. (AE B)

Applicant's most recent statement from his student loan provider is dated September 11, 2018 (between the two \$5.00 payments). As of that date, the amount he owed in interest had increased to about \$6,829, and the amount he owed in fees and costs had increased to \$15,868. Thus, Applicant's total loan balance owed had increased to \$81,061. (AE G)

Applicant noted in his FORM Response that he now earns \$13.05 an hour. This is a \$4.05 increase from his prior hourly rate. (FORM Response).

Policies

It is well established that no one has a right to a security clearance.⁴ As the Supreme Court noted in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials."⁵

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(a), 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."

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance").

⁵ 484 U.S. at 531.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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.

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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁶

AG ¶ 19 provides financial conditions that could raise security concerns. AG ¶¶ 19 (a) (“inability to satisfy debts”); and 19(c) (“a history of not meeting financial obligations”) are applicable, given Applicant's delinquent federal student loans and the tax debt.⁷

⁶ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

⁷ SOR ¶ 1.k concerns past-due property taxes rather than local income taxes, so AG ¶ 19(f) (“ . . . failure to pay annual Federal, state, or local income tax as required”) does not technically apply.

The financial considerations 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;

(d) the individual initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts; 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 took out about \$58,000 in student loans during the three years he took online courses, from 2011 to 2014. He did not obtain a degree. He now owes over \$65,000 in principal and interest on the loans. With fees and costs, he owes over \$80,000.

Applicant's inability to pay his debts more responsibly is due largely to his limited income. This is a condition beyond his control, so AG ¶ 20(b) partially applies. However, to receive full credit, he must show that he acted responsibly under the circumstances. He only recently began to address his debts, making a few small payments. His debts will remain in delinquent status until he completes nine months' worth of \$5.00 payments.

The payment arrangement Applicant has made with his student loan provider may be enough to bring his federal student loans out of delinquent status. However, it is not enough to keep his total loan balance owed from increasing. Applicant has yet to establish a track record of addressing his federal student loan debt in a responsible manner. To do so, he needs to make enough payments so that it begins to decrease. Until he does that, he will not have shown that his student loans are at a level that he can afford to address responsibly. Applicant has not provided sufficient evidence that AG ¶¶ 20(a), 20(b), or 20(d) should apply to mitigate his federal student loan debts, which remain ongoing, delinquent and significant.

Applicant intends to resolve his property tax debt, has a plan in place, and has made one \$400 payment. He has shown sufficient evidence that AG ¶ 20(g) applies to mitigate SOR ¶ 1.k.

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(a), 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. Put simply, it is Applicant's burden to mitigate the security concerns shown by his significant federal student loan debt, which remains delinquent, and he has not done so. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the financial considerations security concerns.

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.j:

Against Applicant

Subparagraph 1.k:

For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge