



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



In the matter of:)
)
) ISCR Case No. 19-00809
)
Applicant for Security Clearance)

Appearances

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

11/06/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On April 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 May 14, 2019, 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 August 19,

2019. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 5. Applicant did not submit a response to the FORM or object to the Government's documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on October 30, 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 59 years old. He earned a bachelor's degree in 1984. He has been employed by the same federal contractor since 1984. He married in 1982 and divorced in 1997. He has three grown children from the marriage, who are ages 31, 33, and 36 years old. He remarried in 2005. He has two stepchildren from this marriage, who are ages 24 and 26 years old. He has held a security clearance since 2001. (Item 3)

In Applicant's answer to the SOR, he stated that he and his wife cosigned for student loans, which were for his adult stepchildren, in order to finance their college educations. He explained that he and his wife made a joint decision not to keep the student loans current because they did not want to continue to enable the "their [children's] lackadaisical effort in keeping their student loans current." (Item 2) He further stated:

Thus, we actively chose to disengage from paying their loans for them. We do fully realize that this action will temporarily hurt our credit rating however our hope is that the credit consequences for them will help them to come to realize they need to re-engage on their own and keep their loans current for the good of their own financial rating and future. (Item 2)

Applicant completed a security clearance application (SCA) in May 2018. Section 26 asked if in the past seven years Applicant had defaulted on any loan; had any bills or debts that were turned over to a collection agency; had an account charged off; had any financial obligations that were over 120 days delinquent that were not previously mentioned or were currently over 120 days delinquent. The inquiry specifically noted to "Include financial obligations for which you were the sole debtor, as well as those for which you were cosigner or guarantor." (Item 3) Applicant responded "no" to the inquiry.

In Applicant's answer to the SOR, he stated:

As far as my answer to the [SCA] concerning defaulting on loans etc., I answered the questions 'NO' because the school loans are in our children's names. Yes we did co-sign for their loans, but the main signature is with the children.

Credit reports from July 2018 and March 2019 corroborate the debts alleged in the SOR. Applicant did not provide additional information on any current action he may have taken to resolve repayment of the student loans.

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.

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.

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

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

(b) unwillingness to satisfy debts regardless of the ability to do so.

Applicant owes delinquent student loans totaling approximately \$69,415 that are unresolved. He cosigned for his stepchildren’s student loans and because they have not been diligent in repaying the loans, he has refused to pay them. There is sufficient evidence to support the application of the above disqualifying condition.

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 is a cosigner on his stepchildren's student loans, which means he agreed to be responsible for them if the children were not. He refuses to pay them in the hopes his stepchildren will understand their financial responsibilities. This may be a sensible parental approach, but it is inconsistent with his obligation to the creditors. His failure to meet his financial obligations cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

There is no evidence Applicant's financial issues were beyond his control. He has consciously and deliberately decided not to fulfill his legal obligation. There is no evidence the problem is under control or being resolved. Applicant has not made a good-faith effort to repay his creditors. AG ¶¶ 20(b), 20(c), and 20(d) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar

form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware that he cosigned for his stepchildren's student loans and that the loans were delinquent. The SCA specifically advises an applicant to disclose financial obligations, including those where the applicant is a cosigner. Applicant deliberately and knowingly chose not to do so. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant cosigned for his stepchildren's student loans confirming he would be responsible for them if they were not. Because they have not taken action to pay them, Applicant wants to teach them a lesson. That does not relieve him of his obligation to disclose this information to the Government or allow him to redefine his obligation regarding the loans. Applicant was aware of the delinquent student loans and made a conscious decision not to pay them or disclose them to the Government. The Government relies on people to be forthcoming and honest on their SCA, even when it involves derogatory information. AG ¶ 17(c) does not apply because deliberately failing to disclose information on an SCA and swearing to its accuracy is not a minor offense. I find Applicant's omissions are serious and cast doubt on his reliability, trustworthiness, and good judgment.

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 Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 59 years old. As a parent he wants his stepchildren to be responsible for student loans that they are signatories on and that funded their college education. However, as a cosigner on the loans, Applicant agreed to be ultimately responsible for the repayment of the loans. He has consciously decided not to abide by his obligation. In making this decision, he also deliberately failed to disclose the delinquent student loans on his SCA. He has not met his burden of persuasion. 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, financial considerations, and Guideline E, personal conduct.

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.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge