



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



In the matter of:)	
)	
)	ISCR Case No. 19-00906
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2020

Decision

CERVI, Gregg A., Administrative Judge

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. The evidence is sufficient to partially mitigate Applicant’s financial consideration security concerns. Accordingly, this case is decided for Applicant, albeit on a conditional basis with additional measures.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 30, 2016 while on active duty in the United States Army. On August 15, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a letter of intent (LOI) to revoke eligibility for access to classified information, assignment to sensitive duties, and access to sensitive compartmented Information (SCI). The LOI included a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). Applicant received the SOR on November 24, 2017, and answered it with an undated letter, submitted in early 2018.

On May 3, 2018, Applicant was issued a supplemental SOR that included additional student loan delinquencies obtained from an updated credit report. On

September 2, 2018 the DOD CAF revoked Applicant's security eligibility and access to SCI, stating that it did not receive a response to the supplemental SOR. Applicant stated that he never received the supplemental SOR. (AE A-6) This is supported by Applicant's active duty Joint Personnel Adjudications System (JPAS) page that shows that Applicant's clearance eligibility was listed as "pending his reply" to the August 2017 SOR. There is no mention of the May 2018 supplemental SOR or subsequent revocation of his clearance. (AE A-4)

Applicant retired from the U.S. Army in November 2018, and was employed as a civilian contractor in approximately January 2019. (AE A-4) In response to a renewed request from his civilian employer for security eligibility, the DOD CAF reissued Applicant an SOR on August 29, 2019, alleging security concerns under Guideline F (Financial Considerations). The DOD CAF acted 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 for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017. This is the SOR at issue in this case.

Applicant answered the SOR on October 7, 2019, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the written record without a hearing. The Government's written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on March 2, 2020. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM and submitted a reply that was received by DOHA on April 24, 2020. The case was assigned to me on June 12, 2020. Applicant provided Applicant Exhibit (AE) A in response to the FORM, and did not object to admission of a personal subject interview (PSI) summary (GE 4). Government Exhibits (GE) 1 through 10 and (AE) A are admitted into evidence without objection.

Findings of Fact

Applicant is a 50-year-old general manager for a defense contractor, employed since approximately January 2019. He received a bachelor's degree in 1993 and a master's degree in 2009. He married in 1991 and divorced in 2010. He remarried in 2014. He has two children and a stepchild, all adults. He served on active duty in the U.S. Army from 1993 to November 2018. He did not submit information regarding combat area deployments or awards. He last served in overseas assignments in Japan (2011 to 2015) and Germany (2015 to 2018). He retired in November 2018 with the rank of Colonel (O-6).

The SOR alleges Applicant owes approximately \$61,245 in delinquent student loans. Specifically, SOR ¶¶ 1.a and 1.d allege two defaulted government student loans placed for collection by the U.S. Department of Education for \$24,788 and \$6,121,

respectively. SOR ¶¶ 1.b and 1.c allege two defaulted private student loans placed for collection for \$19,152 and \$7,373, respectively. The SOR allegations are supported by sufficient evidence in the record.

Applicant's student loans originated from 2007 to 2009 when he obtained federally subsidized and non-federally subsidized loans. (Item 5) Applicant's 2014 credit report (Item 10) shows the private student loans were deferred at one time, but were reported delinquent 150 days past due date with delinquencies occurring in March and April 2014. The government student loans were listed as deferred as well, but were reported 90 days past the due date three or more times, and reported delinquent in February and March 2014.

Applicant's October 2016 credit report (Item 9) shows multiple entries for student loans. Of note, the entries for three Department of Education loans (government loans) are listed as in a collection status, with May 2015 listed as the date of last activity (DLA). The private loans were also listed as past due and in a collection status, with DLAs of February 2015 and September 2016. Applicant's March 2020 credit report continues to show the student-loan accounts listed in the SOR as either past due or in collections.

In Applicant's SCA of September 30, 2016, he did not list any student loan delinquencies or past-due financial obligations, but he noted a home foreclosure in 2011 due to his divorce and military assignment overseas. (Item 3)

Applicant was interviewed (PSI) in March 2017 in Germany by U.S. Department of State security personnel. He denied knowing his student loans were delinquent, and stated that he believed his loans were deferred while on deployment and stationed overseas. He noted that he submitted a deferment request for each of the loans in June 2015, and possessed email confirmations. He explained that the credit report entries showing the loans past due were due to deferments and administrative problems with the accounts.

On August 15, 2017, while Applicant was on active duty, the DOD CAF first issued Applicant an LOI and SOR alleging defaulted student loans. (Item 5) Applicant answered the SOR with an undated letter, submitted in early 2018. (Item 5) Applicant claimed in his response to the first SOR that he was paying his student loans without incident until about May 2015, when he resolved a legal dispute related to his divorce. As a result, he was required to pay alimony and child support. In addition, his new spouse was being treated for cancer and was not working. He claimed that in 2015 he requested a "forbearance" from the student loan servicing companies from paying his student loans, and the payments were not to restart until mid-2016. (Item 5) Applicant did not submit confirmation of the forbearance requests. He noted that he then began an eight-month effort to discuss his loan status with his creditors, but was stymied by the "operational" time differences between the U.S. and Europe, and difficulties getting information from the lenders.

Applicant explained that he subsequently contacted the government student loans servicing agency and by February 2018, agreed to make three monthly payments of

\$1,088 each, with the expectation that after three payments, his government loans would be consolidated. (Item 5) Applicant's submission with his response to the FORM shows only one payment was made under this agreement, on February 7, 2018. (AE A-9) It is unclear why successive payments of \$1,088 were not made per the agreement. The record shows that Applicant believed in April 2018 that his security issues were resolved. (AE A-4)

In Applicant's October 2019 response to the current SOR, he noted that the government loan was "entering" a loan rehabilitation program. (Item 2) He stated that he provided the required income/debt ratio information and was awaiting terms of payment and due dates. He said that on his own initiative, he began making \$500 payments toward the start of an anticipated nine-month payment plan. (Item 2) Applicant's subsequent response to the FORM shows that Applicant made a \$50 payment on this account on August 29, 2019, and two \$500 "good faith" payments in September and October 2019, that did not apply toward his rehabilitation program. He stated that he made these smaller "good faith" payments as he attempted to negotiate lower "qualifying" payments and complete the required paperwork. (AE A) Payments on this account then ceased until January 2020. (AE A-9)

In November 2019, Applicant agreed to pay the required amount on another government loan rehabilitation program (labeled as loan 2 on his response to the FORM), and made four monthly payments of \$1,281 beginning in January 2020. He stated that he is currently negotiating a more affordable repayment plan while maintaining "maximum" monthly payments on this account. He noted that "although [the government account] is still in default," he is in compliance with the rehabilitation plan and expects completion of the plan in September 2020. (AE A; A-9)

On August 13, 2019, Applicant agreed to participate in a loan-rehabilitation plan to pay nine qualifying payments of \$650 per month on the private student loans. Applicant began payments on July 31, 2019, and continued consistent monthly payments and completed the program on April 13, 2020. He was notified that the account was sold to another lender, and he would be notified of the new repayment terms. (AE A-2; A-10)

No evidence of Applicant's current financial status or financial counseling was submitted. Applicant stressed his nearly 26 years of honorable service in the Army, his difficult divorce in 2011 after 20 years of marriage, and difficulties with communications via mail while stationed overseas. Applicant takes responsibility to repay his loans, and he believes that as of September 2020, he will have met all of his student loan rehabilitation obligations. After that time, they will be considered current and no longer in default.

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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g.*, ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g.*, 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; see, AG ¶ 1(d).

Analysis

Guideline F: Financial Considerations

The security concern under this 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

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

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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; and
- (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.

Applicant noted his inability to pay his student loans because of his spouse's medical treatments and legal dispute with his former spouse, along with difficulty in communications with lenders while stationed overseas. Although the loans were apparently deferred at previous times (June 2015), Applicant claimed he requested his loans be held in forbearance in 2017, while he was stationed in Germany. No evidence of forbearance submissions was produced. Applicant failed to make all necessary payments on a rehabilitation agreement beginning in February 2018. He did not complete the program. He made three irregular payments until he was able to start payments on a new rehabilitation program starting in January 2020. He made four monthly payments and expects to continue regular payments until the program ends in September 2020, and the default status will be lifted.

Applicant successfully completed a rehabilitation program for his private student loans in April 2020, and expects to continue with regular monthly payments to a new creditor. This account is no longer in a default status. AG ¶ 20(a) and (d) partially apply.

I am concerned with the undue delay Applicant showed in addressing his loan obligations over a number of years, and am unconvinced of his claim that his overseas assignments were contributing factors to his inability to resolve his student loan issues. Applicant appeared to be in financial distress due to his divorce and subsequent legal battles, and the loss of his spouse's income while she was ill. However, his failure to document agreements with his creditors to delay his loan payments while he was in Europe, and subsequent failures to follow through with repayment agreements is inexcusable for a senior military officer. Applicant's vague explanations and excuses for the accumulation of delinquent student loan debts and his failure to pay ring hollow. However, I acknowledge that Applicant has indeed finally brought his private loans current, and is progressing with resolving his government loan delinquencies. These mitigation actions have convinced me that Applicant is finally in the end-stage of resolving his delinquencies.

Given that the final resolution of Applicant's government student loan rehabilitation programs remain pending, his efforts to date lead to a partial but not complete mitigation of the security concerns. Accordingly, under Appendix C to Enclosure 2 of the Directive, Applicant's eligibility is granted with the provision that he completes all required student loan rehabilitation payments and continues to make regular and consistent monthly payments in accordance with the current terms or subsequent repayment agreements.

Following *Egan* and the clearly consistent standard, and consistent with the discussion in the above paragraph, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person factors, especially Applicant's service and distinguished career in the United States Army. I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him conditional eligibility for access to classified information.

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:
Subparagraphs 1.a - 1.d:

FOR APPLICANT
For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest of the United States to grant Applicant eligibility for access to classified information. Eligibility granted on a conditional basis with additional security measures noted above.

Gregg A. Cervi
Administrative Judge