



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-01685
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

05/12/2020

Decision

MURPHY, Braden M., Administrative Judge:

Applicant incurred significant student debt in college and while pursuing a doctoral degree. These debts became delinquent because he could not afford to pay them on his limited income. Applicant has established a sufficient track record of responsible action towards resolving them. His delinquent debts in the Statement of Reasons (SOR) are being resolved. He is now earning enough money to address his debts, and has sufficient savings to continue to do so. Though the debts are ongoing, he has mitigated financial security concerns. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 16, 2018. On September 4, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant an SOR detailing security concerns under Guideline F, financial considerations, due to his delinquent debts. The DOD CAF issued the SOR 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on October 25, 2019, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 11, 2019. On January 14, 2020, DOHA issued a notice of hearing scheduling Applicant's case for February 4, 2020.

Applicant's hearing was held as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 5, which I admitted without objection. Applicant submitted 11 exhibits with his Answer to the SOR, which I labelled as Answer Exhibits (Ans. Ex.) 1 through 11. Those documents were admitted without objection. Applicant submitted 16 additional groups of documents at his hearing, with a related exhibit list. For administrative convenience, I labelled Applicant's exhibits by number, as he had described them on his exhibit list (Hearing Exhibit (HE) III). Applicant's Exhibits (AE) 1 through 5 were identical to GE 1 through 5, so they were not included in the record. AE 6 was the same as Applicant's Answer to the SOR, so it, too, was not included. (HE III; Tr. 21-24) AE 7 through AE 16 were admitted without objection. Applicant also testified. I held the record open to allow Applicant the opportunity to submit additional documentation. He timely submitted documents that I marked as AE 17 through AE 20. Applicant's post-hearing exhibits were admitted without objection. The record closed on February 18, 2020. DOHA received the transcript of the hearing on February 19, 2020.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.e, all with explanations and documents. I incorporate his admissions and explanations into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 33 years old. He and his wife married in 2016. They have two young children. (GE 1; Tr. 125-126) Applicant graduated from college in 2009, in his home state, State 1. He then studied at a state university in State 2 from 2009 to 2015, earning his master's degree in 2011 and his doctorate in 2015, in electrical engineering. During and after his graduate education, he was also employed as a university research assistant, from 2009 to December 2017. (GE 1; Tr. 30, 33-34)

In January 2018, Applicant left academia and moved to State 3 for a job as an engineer with a large defense contractor. He has been there ever since. (Tr. 30-31). He has never held a clearance before. (GE 1) He has an annual salary of about \$90,000. His wife does not work outside the home. (Tr. 113-114)

The SOR debts are all student loans from Applicant's undergraduate years. (Tr. 35, 75-78, 149-151) Applicant received a fellowship for his first year of graduate school because he was from out of state. During graduate school, he received annual stipends of about \$20,000 a year. He also received some income as a teaching assistant and a research assistant. (Tr. 84-85, 128-129) He did not have funds available from his family or other sources. He "tried to live as cheaply as possible," and he lived in graduate school housing. (Tr. 89-91) Once he earned his Ph.D., he earned about \$80,000 as a university faculty member. (Tr. 123-124)

Applicant's graduate education was largely funded through his fellowship, and his work as a teaching assistant and research assistant. (Tr. 128-129) He said he only took out one loan during graduate school, early in his first semester, for about \$24,000. (Tr. 88, 140)

Applicant's student loans became delinquent during his time in graduate school. He acknowledged that he did not communicate with the lenders to address them during that time, nor did he attempt to defer the loans. He received calls from collectors during graduate school but did not act, because he could not afford to pay them. (Tr. 85-86, 158-160) By the time he earned his Ph.D., he owed several hundred thousand dollars in student loans. (Tr. 78-79) He said that he had "so much debt that I couldn't possibly pay it back," and the accounts became delinquent. (Tr. 35-36, 129-130)

In early 2017, after his father passed away, Applicant received about \$100,000 from his father's life insurance policy, and about \$20,000 from the sale of his late father's house. (GE 1 at 79; Tr. 93-96, 141-144) Applicant first sought to confirm who owned his various loans, before attempting to settle them. He did not want to pay money to someone without confirming that they owed his loan. Dealing with his father's estate also took significant time. (Tr. 95-97)

When he prepared his SCA, in January 2018, Applicant pulled his credit reports and disclosed several of the debts. (GE 1 at 60-79; Tr. 36-37) He discussed them in his background interviews. (GE 5) He also provided additional information and documentation about his debts in a July 2019 interrogatory response to DOHA. (GE 2)

The five student loan debts alleged in the SOR total about \$128,811. They are established by Applicant's admissions and by credit reports from February 2018 and March 2019. (GE 3, GE 4)

SOR ¶ 1.a (\$45,126): Applicant had three student loan accounts with creditor N. (AE 10 at 1) Applicant settled two of the loans with creditor N in June 2019. (Tr. 54; AE 10 at 15, 19, 20) The third student loan with creditor N is the debt at SOR ¶ 1.a. On Applicant's February 2018 credit report, the amount alleged was charged off in December 2016. (GE 3 at 3) The debt is not listed on Applicant's March 2019 credit report (GE 4)

In researching his responsibility for his debts with N, Applicant ultimately communicated with an outside legal counsel representing N in a bankruptcy case involving another debtor (not Applicant). (Ans. Ex. 4 at 12). N's records initially indicated that Applicant's loan was somehow related to that bankruptcy proceeding, and that, as a result, N had stopped collection on the Applicant's account. (AE 11 at 12, letter from N's counsel) However, N later determined that Applicant's loan is not related to the bankruptcy litigation. (AE 11 at 12: "You and [N] have determined that [Applicant's] Loan is not part of the putative class alleged in the Adversary Proceeding.")(Tr. 58-62) (Emphasis added),

Ultimately, Applicant acknowledged that SOR ¶ 1.a is his responsibility. He also declared that he intends to settle and resolve the debt as he had with his other two debts with N. (Answer; Tr. 60-64; 100-102, 133-134) It is unresolved.

SOR ¶ 1.b (\$27,909) is a student loan account from a bank. According to Applicant's February 2018 credit report, the amount alleged was charged off in October 2015. (GE 3 at 3) Applicant's March 2019 credit report states the account was charged off, with \$24,735 past due. (GE 4) Applicant agreed to settle the account for \$9,894 with payments over the next two years. (Answer; Ans. Ex. 6; AE 14 at 22; Tr. 109-113) He provided documentation of several recent monthly payments of \$413. (AE 17, AE 19; Tr. 66-69, 131) The account is being resolved.

In his response to the SOR, Applicant expressed his view that the promissory notes for both loans (SOR ¶¶ 1.a and 1.b) had been forged. He provided copies of promissory notes with what he argued were signatures different from his own. (Answer; Ans. Ex. 1; Ans. Ex. 2; Ans. Ex. 5; Tr. 38-39, 53-58, 111) He believed the debt at SOR ¶ 1.a was a loan taken out by his half-brother. (Tr. 53, 58, 60-61) He acknowledged, however, that forgery would be difficult to prove through litigation: "I mean, there's no clear documentation." (Tr. 111) Moreover, Applicant admitted both SOR ¶¶ 1.a and 1.b in his Answer to the SOR and during his testimony, and has taken documented steps to resolve each account. In doing so, he has accepted responsibility for the accounts. His claims of forgery are not established.

SOR ¶ 1.c (\$12,484) is a student loan account with a bank. Applicant was granted the loan in 2007, for \$9,756. In a January 2019 letter to Applicant in response to his inquiry, the creditor noted that the loan was charged off in 2016 in the amount alleged, and that it was not able to collect on the debt because the statute of limitations had expired. Accordingly, the creditor cancelled the debt and issued Applicant a Form 1099-C in 2016. (Ans. Ex. 7; Ans. Ex. 8; AE 8 at 11; Tr. 46-48, 115-118) The IRS accounted for the cancelled amount and adjusted Applicant's 2016 taxable income accordingly. (AE 8 at 14) As a result, Applicant was later assessed an additional \$3,557 in federal income tax for 2016, which is resolved. (AE 8 at 22, 24; Tr. 48-49, 115-118) The account is listed on Applicant's February 2018 credit report as having been charged off, but no balance is noted. (GE 3 at 4) He believes the account is resolved and closed. (Tr. 49, 131)

SOR ¶ 1.d (\$29,095) is a student loan account with a bank. Applicant entered into the loan in June 2008, for \$23,155. The loan was charged off for \$29,095 in May 2014. In December 2017, the creditor cancelled the principal balance of \$21,530, and issued a Form 1099-C to Applicant. (Answer; Ans. Ex. 9, Ans. Ex. 10; AE 9 at 19; Tr. 49-51, 118-122) The IRS accounted for the cancelled amount and adjusted his 2017 taxable income accordingly. (AE 9 at 22) As a result, Applicant was later assessed an additional \$7,946 in federal income tax for 2017, which is now resolved. (AE 9 at 30, 32, 131) The account is listed on Applicant's February 2018 credit report as having been charged off, but no balance is noted. (GE 3 at 4)

SOR ¶ 1.e (\$14,197) is a student loan account with the same bank as SOR ¶ 1.d. Applicant entered into the loan in August 2006. The loan was charged off for \$14,197 in August 2012. In December 2013, the creditor cancelled the principal balance of \$13,076 and issued a Form 1099-C to Applicant. (Answer; Ans. Ex. 9, Ans. Ex. 11; AE 9 at 16 Tr. 49-51) The account is listed on Applicant's February 2018 credit report as having been charged off, but no balance is noted. (GE 3 at 4; Tr. 131)

Applicant owes two other private loans totaling about \$62,000. They include one from a creditor who filed suit against Applicant in State 1 court. When Applicant became aware of the suit, he retained counsel. In January 2020, the suit was dismissed without prejudice. (AE 15; Tr. 70-72) He also acknowledged that he owes about \$33,000 in federal student loans. (Tr. 134-138)

Applicant has settled several other private student loan debts that were not alleged in the SOR. (AE 7, AE 13; Tr. 24, 38, 45-46, 65-66) He also documented the status of his federal loans. A \$2,700 federal student loan he incurred during college has been paid in full, as of July 2019. (AE 12; Tr. 26, 65) He has also been making \$537 monthly payments on another federal student loan, every month since December 2015, a few months after he finished his schooling. He made \$26,326 in payments on that loan in the years since then. (AE 16; Tr. 72)

Applicant has been better able to address his debts since he earned his Ph.D. and fully entered the workforce. (Tr. 123-125, 129-130) His intention is to continue to pay on his loans. (Tr. 141) He now monitors his credit score more closely. (Tr. 138) He and his wife rent their home. Their son has developmental issues that have led to unexpected expenses, and Applicant expects them to continue. (Tr. 114-115, 123)

Applicant provided a recent bank statement reflecting a combined balance of about \$106,000 in his checking and savings accounts. He intends to use these funds to pay down his student loan debts. (AE 18; Tr. 141-145)

Two university professors and two current co-workers provided letters of recommendation for Applicant. Professor A worked closely with Applicant for about seven years. He attested to Applicant's "dedication towards accomplishing a task, either

professionally or personally, giving specific examples in difficult conditions. He regards Applicant as exceptionally efficient, responsible, and aware of his co-workers' needs and capabilities. (AE 20)

Professor B hired Applicant as a research assistant early in Applicant's graduate school years, and served as an advisor for Applicant's doctoral thesis. Applicant is the only student Professor B has hired as research faculty. He is reliable, direct, and honest. He is dedicated, hard-working, and technically proficient. Professor B had great confidence in Applicant's ability to succeed, whether individually or when leading others on a project. Applicant was "the single most important contributor to my research group in the last ten years." He is also a great friend, caring father, and an attentive husband. (AE 20)

Co-worker A also attested to Applicant's hard work, dedication, and technical abilities. Applicant follows regulations and procedure and is of good character. Co-worker A trusts Applicant to do what is best for the company and the country. (AE 20)

Co-worker B has worked with Applicant daily since he joined the company about two years ago. They are good friends at work. Applicant works hard and has earned the trust of everyone he works with. He is moral and honest. He is a man of integrity. (AE 20)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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."

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. 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 rise security concerns. The following disqualifying conditions are potentially applicable:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant incurred extensive student loan debt while pursuing his education. Most of his loans are from his undergraduate years. They came due while Applicant pursued a doctoral degree. Applicant did not act to defer his loan payments, and could not afford to repay them on his limited income, so they became delinquent. AG ¶¶ 19(a) and 19(c) both apply.

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 good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's student loan debts are ongoing. This precludes application of AG ¶ 20(a).

To some extent, Applicant's inability to act on his student loans was a condition beyond his control, given his limited income while furthering his education. However, his decision to pursue a graduate degree and a Ph.D. was his own choice. This is not to say that his educational path was unreasonable, but it was a conscious choice, and not one without financial consequences. Additionally, Applicant took no action to contact his student loan creditors during graduate school to arrange deferment or some other action on the loans, as he might reasonably have done. AG ¶ 20(b) therefore does not fully apply.

Applicant settled and resolved two of his three student loan accounts with creditor N. Applicant researched the debts and was initially told by N that collection on the third debt (SOR ¶ 1.a) had been halted because of another debtor's bankruptcy proceeding. However, documentation from N's counsel shows that Applicant's loan is

not involved in that proceeding. Thus, SOR ¶ 1.a is unresolved. Applicant accepts responsibility for it and says he intends to resolve it, as he did with the other debts with creditor N.

SOR ¶ 1.b is settled and being resolved. Applicant is paying on the debt. He is also paying on several other student loans, not alleged. Importantly, several other of Applicant's student loan debts have been settled and resolved. This evidence adds to Applicant's good-faith efforts to resolve his debts and improve his finances as a whole. Although SOR ¶ 1.a is not yet resolved, Applicant undertook serious efforts to engage creditor N to clarify his responsibilities, and he resolved two of his other debts with them. He has stated that he intends to resolve SOR ¶ 1.a. Based on his documented track record of action with creditor N, I give this assertion credibility. AG ¶ 20(d) applies to SOR ¶¶ 1.a and 1.b.

The student loans at SOR ¶¶ 1.c, 1.d, and 1.e became delinquent and were charged off. Applicant learned this when he contacted the creditors. The creditors cancelled the debts, and issued Applicant 1099-C forms. The IRS adjusted Applicant's taxable income on the basis of the cancellations, and, accordingly, then adjusted his income taxes owed. The resulting tax debts are resolved. This documents that the accounts are resolved. However, they were not resolved through Applicant's own good-faith efforts. AG ¶ 20(d) does not apply to them.

Only once he earned his Ph.D. in 2015 did Applicant begin earning more than an educational stipend. He began working as a university professor in 2015, and also began paying his student loans in earnest. He began paying his federal student loans in December 2015, and has paid almost \$30,000 towards those accounts since then. He earned \$80,000 as a university professor from 2015 to 2017, and now earns \$90,000 in the defense industry. He now has significant funds in reserve to continue paying down his student loans. Applicant's finances have significantly improved and there are clear indications that his loans are being resolved. Though he has not pursued credit counseling, AG ¶ 20(c) partially applies.

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. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant incurred extensive student loan debt during his many years pursuing his education. His loans became delinquent during this time, when he could not afford to pay them. He established that many of his student loans are settled and resolved, He established enough of a track record of good-faith efforts and responsible action under the circumstances. In the defense industry, Applicant is earning an income allowing him to continue to pay down his debts, and has access to funds allowing him to continue to do so. I am confident that he will continue to show responsible action towards resolving his student loan debts. Applicant is not required to pay off all of his debts at once, or to pay them off in any particular way. He need only show that he is taking responsible and appropriate documented steps towards resolving his debts. Applicant has done so.

Overall, the record evidence leaves me without questions or doubts as to Applicant's continued eligibility and suitability for a security clearance. I conclude Applicant mitigated 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.f:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge