



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



In the matter of:

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ISCR Case No. 19-02147

Applicant for Security Clearance

Appearances

For Government: Rhett Petcher, Esq., Department Counsel

For Applicant: *Pro se*

07/16/2020

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not intend to falsify or hide relevant information on his security clearance application (SCA). The security concerns under Guideline E (personal conduct) security concerns are mitigated. Applicant did not provide sufficient information about his efforts to resolve any of his delinquent debts alleged in the statement of reasons (SOR). He did not show diligence or a good-faith effort in the handling of his financial issues. Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 26, 2018, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or SCA. On July 26, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F and Guideline E.

On August 5, 2020, Applicant provided his response to the SOR. He admitted all of the SOR allegations and requested a hearing before an administrative judge. On December 4, 2019, the case was assigned to me. On February 10, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 27, 2020.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-4, and I admitted all proffered exhibits into evidence without objection. Applicant testified, but did not offer any documents. I held the record open until March 19, 2020, in the event Applicant wanted to submit documentation. He did not submit any documents. DOHA received the hearing transcript (Tr.) on March 6, 2020, and the record closed on March 19, 2020.

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations, but under Guideline E, he stated that he had not fully understood the SCA question which asked whether he had "defaulted on any type of loan." He claimed not knowing the question would also include student loans. He did not provide any supporting documentation about the status of his delinquent debts in his SOR response, at the hearing, or during the three week period I held the record open. (Tr. 13, 37)

Applicant is 27 years old, and he has been employed as a production assembler technician since September 2018 for a DOD contractor. He attended three years of college, but he did not earn a college degree. He is unmarried and does not have any children. His current annual salary is about \$25,000. His employer has requested Applicant be granted a security clearance so that he may perform specific duties in the course of his employment. (Tr. 14-17, 20-22; GE 1)

Financial Considerations

The SOR alleges ten delinquent debts totaling \$24,491 as follows:

SOR ¶¶ 1.a and 1.b are delinquent medical accounts totaling \$179. Applicant admitted he suffered a medical issue in approximately 2015 which required surgery. During his January 2019 background interview, he told the investigator that he had not been aware of the medical debts. He promised to look into the matter, and if the debts were legitimate, he would make lump sum payments within one or two months. At the hearing, Applicant testified that he had not contacted the creditors to arrange a payment plan, or made any efforts to rectify these medical debts. He is underemployed and does not have sufficient income to satisfy these accounts. The delinquent medical accounts have not been resolved. (Tr. 26-28; GE 2, GE 3, GE 4);

Applicant admitted he had eight delinquent student loans totaling \$24,312 (SOR ¶¶ 1.c-1.j.) He obtained student loans to fund his three years of college. He was not doing well in college, and decided to leave college to enter the workforce. Applicant testified that he just recently arranged a payment plan and has made two \$20 payments two weeks before his hearing. He became aware that he needed to resolve his student loans referred for collection in 2018, after his employer asked him to apply for a DOD security clearance. He made sporadic contact with the creditor the following two years. He had some difficulty determining the specific creditor holding his student loans, and getting the creditor to return his phone calls. Applicant admitted he did not diligently pursue a repayment agreement with the creditor due to “lack of time,” or he just “forgot.” It was not until he received his hearing notice in February 2020 that he made setting up a student loan payment plan a priority. The student loan creditor recently received Applicant’s tax forms and is in the process of calculating the appropriate amount of his monthly student loan repayment. (Tr. 28-37; GE 2, GE 3)

Applicant is current on filing his income tax returns. His 2017 tax refund of about \$900 was intercepted by the Government and applied to his delinquent student loan balance. He does not have a monthly budget in place, and he has not participated in any financial counseling. Applicant is interested in getting the Dave Ramsey videos from his friend to learn more about how to properly manage his money. (Tr. 40-42, 52-53)

During the hearing, Department Counsel noted the absence of corroborating or supporting documentation of Applicant’s resolution efforts with his delinquent student loans. Aside from Applicant’s uncorroborated statements and the most recent credit report, there is no documentary evidence showing that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the student loans. Applicant failed to submit any corroborating or substantiating documentation even though Department Counsel noted at the hearing that current bank statements, e-mail communications, and a final repayment agreement from the creditor would be appropriate types of documents that Applicant could provide to mitigate his case. The record was held open for three weeks for this endeavor, but Applicant failed to submit any documentation. (Tr. 36-37)

Personal Conduct

SOR ¶ 2.a alleges that Applicant deliberately failed to disclose his delinquent student loans on his 2018 SCA. He admitted this allegation in his response to the SOR, and also listed that he did not fully understand the question. At the hearing, Applicant stated that after he read the SCA question, he thought he was supposed to disclose delinquent personal loans only, and he did not even consider listing his delinquent student loans. He credibly denied that he purposely tried to hide his adverse student loan information from the Government, or during the course of his security clearance investigation.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (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 did not provide supporting documentation to show he made payments or arranged payment plans with his student loan creditor. His 2017 income tax refund was intercepted as a partial payment toward his delinquent student loans because he failed to pay them voluntarily. This does not demonstrate a good-faith effort to resolve debts or repay overdue creditors. His eight student loans total about \$24,312, and the two unpaid medical accounts add an additional \$179 to his overall delinquent balance. During his early 2019 background interview, he had stated that if he determined the medical accounts were his responsibility, he would make lump sum payments within one to two months. Applicant has not taken responsible action in the handling of his delinquent financial responsibilities.

Despite holding the record open for three weeks, Applicant did not provide sufficient documentation relating to his SOR debts such as: (1) proof of payments, for example, checking account statements, photocopies of checks, or a letter from the creditor proving that he paid or made any payments to the creditor; (2) correspondence to or from the creditor to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating he did not believe he was responsible for the debt and why he held such a belief; (4) evidence of attempts to negotiate payment plans, for example, settlement offers or agreements to show that he was attempting to resolve a debt; or (5) other evidence of progress or resolution. There is insufficient assurance that his financial problems are being resolved.

Under all the circumstances, he failed to establish mitigation of financial considerations security concerns.

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

The SOR alleges that Appellant deliberately failed to list his delinquent student loan accounts on the SCA, as required. 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 condition under AG ¶ 17:

(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.

Appellant did not understand that he had to disclose his delinquent student loans on the SCA. He thought the question pertained to delinquent personal loans only. It was not his intent to deceive security officials by providing false information in his SCA about his finances. Applicant's sincerity at the hearing was convincing that his omissions were caused by a misunderstanding of the SCA financial question. I find his omission on his SCA was not intended to deceive, and his conduct does not cast doubt on his reliability, trustworthiness, and good judgment. There is sufficient evidence to apply AG ¶ 17(c).

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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 27 years old, and he has been employed as a production assembler technician since September 2018 for a DOD contractor. His annual salary is approximately \$25,000.

Applicant did not provide documentation about why he was unable to make greater progress resolving two relatively small delinquent medical accounts or eight student loans referred for collection. There is no evidence of progress (payments or payment plans), in the last two years for any of the SOR debts, and he did not show good faith or responsible financial action in the handling of his delinquent debt. Overall, Applicant's conduct raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)). I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Although he mitigated the personal conduct security concerns, Applicant failed to mitigate 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-j:	Against Applicant
Paragraph 2, Guideline E:	For APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge