



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 19-03671
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

07/08/2021

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On April 24, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 or after June 8, 2017. Applicant admitted all but one of the allegations. The Government requested that a hearing be held before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on January 5, 2021.

On March 5, 2021, a notice setting the hearing for March 24, 2021, was issued. The hearing was convened as scheduled.

The Government offered seven exhibits (Exs.), noted as Government (GExs.) 1-7, and Applicant gave testimony. With no objections, all exhibits were accepted into the record. On April 5, 2021, Applicant submitted four exhibits (AExs.) A-D via email. With no objections, all documents were accepted. The transcript of the proceeding (Tr.) was received on April 7, 2021. The record was closed on April 16, 2021. Based on the testimony, materials, and record as a whole, I find Applicant mitigated financial considerations security concerns.

Findings of Fact

Applicant is a 42-year-old install technician. He is divorced and has no children. Applicant is presently engaged to marry. The couple live together in a rented apartment and share expenses. (Tr. 18) Applicant makes a monthly payment of \$400 for his automobile. After taxes, Applicant earns approximately \$62,400 a year. He has no recent periods of unemployment.

Coming from a military family, Applicant aspired to military service. He served in the military for a “couple of months” before being honorably discharged in the late 1990s due to medical issues. (Tr. 8, 20) He was previously vetted and granted a security clearance, including a top-secret clearance granted in 2018. He earned an associate’s degree in 2014. He has outstanding federal student loans totaling approximately \$35,000 dating back to his associate degree studies, circa 2011-2014. He admits all allegations related to his student loans (SOR allegations 1.a, 1.c-1.h), but denied knowledge of a medical debt for \$639 (SOR allegation 1.b). The debt at 1.a has been paid and Applicant does not recognize, and cannot validate, the debt at 1.b. (Tr. 64-65)

When Applicant first started his associate’s degree program, he met with a financial officer at the institution. (Tr. 22) His education was to be financed through the school and through government student loans. During his program, he paid the school about \$175 per month toward his school-based loan. (Tr. 24) By graduation in 2014, he had settled his obligation to the institution and accepted a job offer. (Tr. 26-27) At that point, he accepted a brief deferment on his federal student loans before he started making \$175 monthly payments toward them via the telephone. Soon, the government was asking for monthly payments of \$375 to \$425 a month. (Tr. 27-30)

At the time, Applicant was unable to pay more than \$175 a month toward his federal student loans (Tr. 28) He was making about \$42,000 a year and living with his parents, who were having health issues and needed his assistance. They lived in a costly region. After three to six months, he ultimately ceased making payments on these government-backed student loans. Meanwhile, between 2014 and 2018, Applicant provided his parents with spare money and time to help with their declining health, medical expenses, and care. (Tr. 55-56) These expenses increased when his mother was diagnosed with Stage 4 cancer. Spare funds were also expended toward the health issues of both his sibling and himself.

In the interim, Applicant tried to get his federal student loans removed on the theory that the institution had subsequently lost its accreditation. (Tr. 32) He believed this made his diploma invalid. He thought this notion to be true when he was later told by another school that they would not accept credits from his prior school because it had lost its accreditation. (Tr. 35-36) However, after researching the issue, Applicant found that he was still liable for the related federal student loans because the school was still accredited at the time of his 2014 graduation. (Tr. 37)

Applicant then believed the obligation had disappeared when his 2017 or 2018 credit report showed the accounts as closed. (Tr. 33-34) He filed an inquiry with the government concerning these loans in 2018, but never received a response. (Tr. 38) He was alerted to the fact the student loans were still owed during a March 2019 investigative interview and review of a different credit report. (Ex. 2) Confused, Applicant researched further. He consulted two organizations which promised they could put him on the path to some form of loan forgiveness. Indeed, he paid one of the entities \$600 for its services. Soon, however, he suspected these organizations to be conducting scams. (Tr. 73)

Applicant then found a government contractor in the business of counseling and assisting people regarding federal student loan repayment. He started working with it in 2020. He enrolled in its program in October 2020 with payment of \$300 and entered into an agreement to start repayments in September 2021, at the end of a current program created to relieve student loan holders from their obligations during the recent global pandemic. At present, he is both financially able and motivated to meet his obligations under that program.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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. 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 variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person. This includes information that is both favorable and unfavorable.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for access to classified

information will be resolved in favor of national security. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 to obtain 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Finally, these decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that failure or inability 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.

Here, the Government offered documentary evidence reflecting that Applicant has acquired multiple delinquent debts, mostly in the form of student loans. Under these circumstances, two financial considerations disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

Conditions that could mitigate the finance-related security concerns posed here include:

AG ¶ 20(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;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problems 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 under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant timely repaid his student loans to his school, but his federal student loans remained after graduation. Based on his income and expenses, he received a brief deferment on repaying his government loans, but he was unable to pay the full amount requested by the government when that period ended due to insufficient income, his need to financially help his ailing parents, and the local cost of living.

In addition, Applicant began to question whether he actually owed the government student loans after the school lost its accreditation. Ultimately, his investigation revealed the debts remained valid. He was again distracted from the federal student loans when they appeared as closed on his credit report. Ultimately, in 2019, an investigator showed him the debts were still existent. After attempting to deal with them through two organizations he ultimately found to be either scams or of dubious quality, he found a government contractor that served not only as a counselor but as a conduit through which he could seek to eliminate his debts through a structured, government-approved plan. In 2020, he was relieved of payments due to a program instituted to provide financial relief during the height of the global pandemic. At the end of the program, he will transition to its structured repayment plan, effective September 2021. Under these facts, AG ¶ 20(b)-(d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of his conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on a careful consideration of both the administrative guidelines and the whole-person concept.

In this case, Applicant was distracted from his direct payment on his government student loans for a few years due to multiple complications, including insufficient income in a costly region, ill parents, and the questionable status of his former school. The facts and his credible testimony, however, show that he never attempted to purposefully avoid honoring his debts. Each distraction was eventually overcome and followed by attempts at corrective action. Today, he is relieved of loan payment due to a temporary scheme to aid individuals during the recent global pandemic. Through the proper channels, he has set himself up to start regular, automatic payments through a recognized organization when that scheme comes to an end this summer. In light of these considerations, I find financial considerations security concerns are mitigated.

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:	FOR APPLICANT
Subparagraphs 1.a-1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge