



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 20-01454

Applicant for Security Clearance

Appearances

For Government: Allison Marie, Department Counsel
For Applicant: *Pro se*

August 2, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On August 31, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on a date uncertain. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On January 13, 2021, Department Counsel submitted the Government's written case. At that time, the Government amended the SOR to withdraw subparagraphs 1.i through 1.m., as they appear to be duplications of other allegations in the SOR. A complete

copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant and received by him on March 29, 2021. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant failed to submit a response to the FORM. Applicant did not object to the SOR amendment, and subparagraphs 1.i through 1.m were withdrawn. Applicant did not object to Government Items 1 through 9, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 9.

Findings of Fact

Applicant is 34 years old, and married with two children. He has a bachelor's degree. He is employed by a defense contractor as a Quality Engineer, and is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

Under Guideline F, the SOR alleges that Applicant has eight delinquent Federal student loan accounts that were placed for collection totaling in excess of \$52,985. In his answer, Applicant denies each of the debts listed in the SOR, arguing that he never applied for the loans and that they were fraudulently opened by the university without his consent. Applicant's credit reports dated August 20, 2019; March 10, 2020; and December 21, 2020, confirm this indebtedness. (Government Exhibits 7, 8, and 9.)

Applicant served in the United States Air Force on active duty from 2006 until his honorable discharge in 2010. Later in 2010, he began attending a university, and successfully completed five semesters: spring 2010; summer 2010; fall 2010; spring 2011; and summer 2011. Applicant graduated with his degree in August 2012. He has been working for his current employer since June 2019.

Applicant stated that he used his Post 9/11 GI Bill educational benefit to pay for his tuition to attend the university. He further contends that his education benefit covered the full costs of his tuition. He asserts that the university opened up the loans with Sallie Mae on Applicant's behalf without his permission. (Government Exhibit 5.) Applicant states that he did not apply for the Federal student loans, and that they were unnecessary because of his GI Bill benefit. Applicant acknowledges that in August 2012, he started receiving bills for the Federal student loans. At that time, he contacted the university and was told that the loans were for tuition expenses that were not covered by his GI Bill benefit. (Government Exhibit 6.) Applicant disagreed, and between 2012 and 2019 continued to correspond with both the university and Sallie Mae, consistently asserting that he is not responsible for the loans. By the end of 2019,

Applicant realized that neither the university nor Sallie Mae went along with his assertions. They were not changing their position about his liability for the loans, and that Applicant would have to begin paying them. (Government Exhibit 6.) Applicant has made no payments toward these loans.

An account summary of Applicant's financial records from the college, reports that the tuition was \$14,455 for each of Applicant's five semesters, and that the payments were made from Applicant's Federal Stafford Subsidized and Direct Unsubsidized loans, and payments made from Applicant's GI Bill benefit. Applicant's documentation submitted with his Answer reflects that his five semester of tuition at the college totaled \$72,775. Additionally, \$60,012.33 was disbursed from the GI Bill benefits; however only \$30,442 of that sum was paid directly to the college by check. The remaining \$29,569.83 was disbursed to Applicant by a direct deposit. It is not clear what happened to the sum that was paid directly to the Applicant. (Government Exhibit 4.)

Applicant failed to respond to the FORM. He provided no documentation to support his contention that he is not liable for his Federal student loan debt. He provides no evidence to prove that the tuition required by the college was excessive or fraudulent or that the federal student loans were opened without his knowledge or permission.

The following delinquent Federal student loan accounts in the SOR remain owing and are of security concern:

- a. A delinquent Federal student loan account owed to a creditor was placed for collection in the amount of \$10,591. Applicant denies the debt. (Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.
- b. A delinquent Federal student loan account owed to a creditor was placed for collection in the approximate amount of \$10,250. Applicant denies the debt. (Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.
- c. A delinquent Federal student loan account owed to a creditor was placed for collection in the approximate amount of \$9,342. Applicant denies the debt. (Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.
- d. A delinquent Federal student loan account owed to a creditor was placed for collection in the approximate amount of \$4,439. Applicant denies the debt. (Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.
- e. A delinquent Federal student loan account owed to a creditor was placed for collection in the approximate amount of \$3,149. Applicant denies the debt.

(Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.

- f. A delinquent Federal student loan account owed to a creditor was placed for collection in the amount of \$2,714. Applicant denies the debt. (Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.
- g. A delinquent Federal student loan account owed to a creditor was placed for collection in the approximate amount of \$6,059. Applicant denies the debt. (Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.
- h. A delinquent Federal student loan account owed to a creditor was placed for collection in the approximate amount of \$6,441. Applicant denies the debt. (Government Exhibit 4.) Applicant provided no documentary evidence to show that he has paid the debt. The debt remains owing.

Applicant's most recent credit report shows that each of the Federal student loans remains owing. (Government Exhibit 9.) Applicant was not successful in his argument to the university or to Sallie Mae that he never applied for the student loans. In fact, from the calculations on his student financial summary, his GI Bill benefits and monies from the Federal student loans were used to pay his tuition.

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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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 adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has a history of delinquent student loan debt. He continues to owe the debt and has made no effort to resolve it. There is insufficient information in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has the financial resources available to pay this financial obligation. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

- (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 has been working full-time for his current employer since July 2019. There is nothing in the record to show that any progress has been made toward resolving his delinquent student loan debts. Applicant offers only that he never applied for the loans, and that they were unnecessary because his tuition was covered by his GI Bill benefit. Clearly the university records show differently. Applicant believes that the college is known for predatory lending against veterans, and that he was a victim of fraud. Despite his assertions, Applicant has not provided any documentation to support his contentions. A close look at Applicant's student account summary shows that there was a tuition deficiency that remained after Applicant's GI Bill Benefit was credited to his tuition costs. Thus, Applicant's financial indebtedness remains recent, is ongoing, and has not been resolved. In fact, Applicant's response to the problems do not seem reasonable. Applicant has not shown good judgment or made a good faith effort to

repay his creditor or otherwise show that he can resolve the debt. Under the circumstances, he has not acted reasonably and responsibly. Sufficient mitigation has not been shown.

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 relevant 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 relevant facts and circumstances surrounding this case. I conclude Applicant has not 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. through 1.h.	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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge