



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



In the matter of:)	
)	
)	ISCR Case No. 20-03772
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

08/18/2021

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On February 2, 2021, in accordance with DoD Directive 5220.6, as amended (Directive), and Administrative Guidelines (AG) implemented on June 8, 2017, the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on May 27, 2021. The Defense Office of Administrative Hearings and (DOHA) issued a notice of hearing on July 2, 2021, scheduling the hearing for July 20, 2021. The Government offered Exhibits (GE) 1 through 4, which were admitted into the record without objection. Applicant testified in his own behalf, and submitted Exhibits (AE) A through E, which were marked and admitted into the record without objection. I kept the record open until August 6, 2021 and Applicant

submitted document packet AE F without objection. The transcript was received on July 28, 2021. The Government submitted GE 5 into the post-hearing record relating to the federal student loan rehabilitation program, which was accepted into the record without objection.

Findings of Fact

Applicant, age 35, is single and has no children. (Tr.16) He obtained his undergraduate degree in 2008. (Tr. 22) He obtained a master's degree in 2016. Applicant completed his security clearance application on November 6, 2018. He has not held a security clearance in the past. (GE 1) He is being sponsored for a security clearance by a defense contractor. (GE 1) He has no military experience. He has been currently unemployed since February 2020. (Tr. 39)

The SOR alleges that Applicant is indebted to the Department of Education for a collection account in the amount of \$73,991. (1.a); and is indebted to a cable company in collection for approximately \$2,807. (1.b) Applicant admitted the SOR allegations 1.a and 1.b.

Applicant acknowledged the delinquent debts. He attributes his debts for both accounts to unemployment and temporary jobs. He admits that his largest debts are the student loans and has recently made a payment arrangement to liquidate the student loans. (Answer) As to the collection account cable bill in the amount of \$2,807, Applicant paid the account on February 24, 2021. (Attachment to answer) Applicant also attached his 2017 and 2018 tax returns with his answer.

After his graduation, Applicant worked as a substitute teacher for the past 12 years making \$100 a day. (Tr.22) He coached high school football for several years. Also, he worked for his brother's fitness company as a personal trainer (\$25 an hour) with students with special needs. He stated that he did this work for 13 years in conjunction with the substitute teaching. (Tr. 22)

In February 2020, Applicant was relieved from his teaching duties due to COVID. He did not receive any Government assistance until June 2020. (Tr. 23) During that time, he earned a security plus certification to help get a position with IT. He was hired on November 2020. (Tr. 23) His parents helped him financially. (AE B, C)

Applicant acknowledged that after he completed his master's degree in 2016, student loan billings of \$30,000, began to appear. He acknowledged that he ignored them and was irresponsible. He stated that he made a \$600 payment toward the student loans in 2018 or 2019 to a loan forgiveness organization to help negotiate a lower balance and lower monthly payments, but did not follow up with the organization. He does not remember the name of the organization. (Tr. 23, GE 3, GE 2) He stated that due to his limited finances, he was not able to maintain any payments. He also acknowledged that he was immature.

During Applicant's 2019-2020 investigative interview, he stated that he would contact the creditors in order to resolve the delinquent accounts. Applicant stated that he lives within his means and pays all of his bills. He wants to have good credit and "be better financially." (GE 2) He wants a better paying job so that he can pay off his debts. (GE 2) His credit bureau report of March 10, 2020 reflects that he had other accounts that he paid as agreed. (GE 4) He has no new consumer debts. (Tr. 42)

Applicant received his SOR in 2021 and understood the significance and the reason for his denial of a security clearance. He paid the cable debt as referenced above. (Tr. 24) He stated that the other student loans were up to date. (GE 3)

Applicant presented a loan repayment agreement that explained each of the defaulted federal education loans, showing a defaulted loan balance of \$73,908.54. (AE A) The repayment agreement is dated July 2, 2021. It does not show any payments made. He stated that he pays \$5 a month for rehabilitation of his loans and take them out of default. (Tr. 34) However, the starting date is July 24, 2021. (Tr. 36) At the hearing, Applicant stated that he started the payments in March. He did not have any documentation to corroborate his payment claims. Applicant also stated that he owes \$3,500 to the state relating to unemployment, which he has disputed. (Tr. 40)

Applicant submitted letters of reference from his parents who detail his difficulty with finding a job with a steady income, forcing him to struggle with his bills. The parents continue to support their son emotionally and financially. (AE B, C) Applicant's parents describe him as loyal and trustworthy. He had a scholarship for his undergraduate degree, but used student loans for his master's degree in 2016. (AE C)

Applicant provided two more letters of recommendation from others who have known Applicant his entire life. One letter stated that Applicant was "too embarrassed to ask his family and friends to help him financially, when he was unemployed for a significant amount of time after graduation." (AE D, E)

In his post-hearing submissions, Applicant provided a current budget, dated July 31, 2021. (AE F) He showed a monthly net income of \$1,760 and total monthly expenses of \$2,630. He listed his payment of \$5 for the student loan program, which has a balance of \$73,904. He explained he lived in his parents' home and rented rooms to close friends. (Tr. 45) His car note is paid. (Tr. 47)

Also, in Applicant's post-hearing packet, he provided information concerning his 2020 federal tax returns and his wage sheet from the substitute teaching. He also provided his state tax income return. (AE F)

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 (AG) list

potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 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. 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

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 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

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

Applicant admitted that he had two delinquent debts totaling approximately \$78,807. The smaller debt of \$2,807 was paid in 2021. However, the debt was about

eight years old and he paid it after receiving the SOR. The student loans represent money that Applicant borrowed in 2016-2018 for his graduate studies. Applicant admitted that he made only one payment of \$600 in 2018. He ignored the student loan issue for many years. However, he was credible in his explanations that his failure to pay was also a result of lack of means to pay and financial hardship since graduating in 2018. He recently entered into a rehabilitation program. He submitted no proof that he has actually made \$5 payments for the past several months.

Applicant has done little to rectify the student loan situation until recently and did not provide the exact agreement he entered into for the rehabilitation program, despite the fact that the record was left open for further submissions. He did not receive financial counseling. Although, he was unemployed or had underemployment, he did not act responsibly in this situation or make good-faith efforts to repay the student loans. His unemployment does appear to be a circumstance that occurred beyond his control due to unemployment, but he acknowledged that he did not act responsibly and was immature. Applicant recently began a plan of rehabilitating his student loans and has resolved the other consumer debt in 2021. However, there is no track record to support mitigation in this case. None of the mitigating conditions apply. There is no evidence to show that Applicant has made a consistent or concerted effort to resolve any of his financial issues except for his recent involvement with the two debts.

Applicant has not acted responsibly and was not proactive until after receipt of the SOR. Without documentary evidence of more efforts to address his student loans, he has not demonstrated a track record of payment initiative, and there is no indication that his financial situation is under control. AG ¶ 20(a)-20(d) and 20(g) are not established. Applicant's delinquent student debts remain delinquent and in rehabilitation. He has not met his burden of proof in this case. For these reasons, I find SOR ¶¶ 1.a and 1.b. against Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, including Applicant's unemployment and desire to repay his student loans, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. I conclude that it is not in the national interest to continue Applicant's eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.b:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge