



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 20-02787 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Carroll Connelley, Esq., Department Counsel
For Applicant: *Pro se*

11/04/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On January 25, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on March 8, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 1, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 20, 2021, scheduling the hearing for October 26, 2021. The hearing was held

as scheduled. The Government offered exhibits (GE) 1 through 5. Applicant offered Applicant Exhibits (AE) A through E. There were no objections and the exhibits were admitted into evidence. Applicant and one witness testified. The record was held open until November 2, 2021, to allow Applicant to submit additional documents. Applicant provided AE F through J. There was no objection and the exhibits were admitted into evidence and the record closed. DOHA received the hearing transcript on November 1, 2021.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 30 years old. He earned a bachelor's degree in 2014. He has cohabitated with his fiancée since January 2020. He and his fiancée have a two-year-old child. Applicant has been employed by a federal contractor since November 2019. (Tr. 16-20; GE 1)

Before starting his current job, Applicant had periods of unemployment. He was unemployed from August 2017 to April 2018; from January 2019 to May 2019; and from August 2019 to November 2019. (GE 1)

Applicant lived with different family members after graduating college. He testified that he contributed to the household expenses. He said at times there were six adult family members in his parents' household, and he was the only one working. His parents asked him to leave their house in February 2019. Applicant's fiancée was pregnant with their child at the time. They moved in with her family and later moved back in with his parents. His mother told him to leave the house in February 2021, and he and his family were homeless. He and his fiancée now are renting an apartment. (GE 1; Tr. 21-29)

The SOR alleges Applicant has delinquent student loans that total approximately \$39,072. Applicant testified that his mother paid his student loans for a period of time and then stopped. Applicant did not know what period of time she made payments or the amount of any payments. Applicant completed a security clearance application (SCA) in December 2019 and disclosed he had \$44,396 in delinquent student loans. He disclosed that he did not have a stable place to live and had difficulty paying his bills. He said he would start making payments of \$100 each month for the next couple of years to satisfy his student loans. (Tr. 30-39; GE 1)

Applicant was interviewed by a government investigator in February 2020. He acknowledged his student loans and other delinquent accounts. He disclosed the student loans became delinquent in 2018 when his mother stopped making payments due to a disagreement with Applicant. He told the investigator he would contact the creditor in February 2020 and arrange a payment plan of \$100 a month. At his hearing, Applicant testified that after contacting his employer for guidance on how to address his student

loans, he applied for a loan rehabilitation program that began in March 2021, which requires he make monthly payments of \$5 for nine consecutive months. Applicant has made monthly payments of \$50, and the program will be completed in December 2021, upon receipt of his final rehabilitation payment. Post-hearing, Applicant provided proof that he has made consistent payments of \$50 a month from April through November 2021. (The month of June's payment receipt was missing from Applicant's documents, but because the payments are being automatically deducted, I believe this was an oversight.) (Tr. 31-33; GE 5; AE F, G, H)

Applicant believes that at some point his student loans will be forgiven, and he referred to the program he is participating in as a loan forgiveness program. Once he completes the rehabilitation program, he does not know what his new monthly payments will be or what period of time he will be required to make payments. He stated that he was advised that upon completion of the rehabilitation program, at some point, his loans will be transferred to a new department and a payment schedule will be made. Applicant's loan rehabilitation application reflects a monthly income of \$2,672 and his monthly expense are \$3,175. (Tr. 31-39; AE A, B, C)

The SOR also alleges a debt for a car repossession from 2019 (SOR ¶ 1.c-\$12,569), two medical debts from 2018 (SOR ¶ 1.a-\$1,700 and SOR ¶ 1.b-\$499) and a debt for dental services (SOR ¶ 1.k-\$710), all in collection. Applicant acknowledged these debts to the investigator and admitted them in his SOR answer. He told the investigator that he intended to file bankruptcy in March 2020 to resolve his debts and get a fresh start. At his hearing, he confirmed that his intention was to save money (\$1,500) so he could file bankruptcy to resolve his delinquent debts. He has \$300 in his bank account. (Tr. 69; GE 5)

Post-hearing, Applicant provided a payment receipt of \$25 dated November 1, 2021, for the debt in SOR ¶ 1.a. He stated that he intended to make future monthly payments of \$25. He provided a payment receipt of \$50 dated November 1, 2021, for the debt in SOR ¶ 1.c and intends to make future monthly payments of \$25. In Applicant's post-hearing email, he stated he contacted the creditor for the debt in SOR ¶ 1.b, but was advised that no payments would be accepted because Applicant disputed the account on his credit report. That matter must be resolved before acceptance of payments. Applicant said he asked the creditor that the dispute be terminated so he can start making payments. (AE F, I, J)

Applicant testified that in February 2021, he hired a person to dispute all of the debts on his credit report. He pays him \$200 a month. Applicant provided documents to show that every debt on credit reports from the three credit bureaus were disputed, even debts he knows he legitimately owes. He said he was going to pay the debts he knows he owes. (Tr. 61-62; AE D, E)

Applicant testified that the week before his hearing, he contacted the creditor for the debt in SOR ¶ 1.k and will make payments toward the debt. Post-hearing, Applicant provided an email that stated on November 1, 2021, he spoke with the creditor for the

debt in SOR ¶ 1.k to set up a payment plan for \$25 a month. He said he made the first payment and was waiting for a confirmation receipt. (Tr. 57-60; AE F)

The debts alleged in the SOR are corroborated by Applicant's admissions in his answer to the SOR, his disclosures in his SCA, his statements to the government investigator, and credit reports from April 2021, October 2020, and January 2020. (GE 1, 2, 3, 4, 5)

Applicant testified that he is reducing his expenses and has cut back on eating out. He is hoping and planning to have a house in the next five years. He testified that this past year has made him a man, and he is getting his life together. His fiancée testified on his behalf and reiterated that they had unstable housing for a period. She is unemployed, but is looking for a job, and hopes to go back to school to earn her bachelor's degree. She intends to work while pursuing her education. She stated that Applicant has been the sole provider for the past two years. (Tr. 60-61, 76-83)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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. Instead, 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 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant had delinquent student loans and delinquent debts beginning in about 2018 that he has not been able to pay. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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;
- (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 attributed his financial problems to unemployment, underemployment, and unstable living arrangements. He lived with relatives until 2019 and paid some household expenses. Applicant's mother paid his student loans for a period. After his mother stopped paying them, Applicant was unable to pay them himself. Although he indicated to the government investigator that he was going to begin paying them in 2020, he did not. In 2021, he entered a student loan rehabilitation program, and has made consistent monthly payments of \$50. If he makes the remaining payment, his loans will be out of default and a new payment program will be implemented. Applicant did not understand the specifics of what the new program would require. At this point, his loans remain in a default status, but are likely to be removed from that status. The financial statement on his student loan rehabilitation application reflects he has a deficit of approximately \$500 each month.

Despite acknowledging debts that he legitimately incurred, Applicant is disputing all of his debts on his credit reports. Applicant's financial strategy is to file bankruptcy to resolve his delinquent debts after he has saved money for the retainer fee. I cannot find that future financial issues are unlikely to recur. Post-hearing, he made minimal payments on his other delinquent debts and said that he intends to make regular monthly payments on these debts. Applicant's intentions to pay debts in the future are not a substitute for a

track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). AG ¶¶ 20(a) and 20(e) do not apply.

Applicant did not make any payments on his delinquent debts, except through his student loan rehabilitation program, until after his hearing concluded. The timing of resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who takes action to resolve financial problems only after being placed on notice his or her clearance is in jeopardy may lack the judgment, and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. See, e.g., ISCR Case No. 17-03229 at 4 (App. Bd. Jun. 7, 2019).

Applicant is supporting his fiancée and their child and does not have the means at this time to pay his delinquent debts. I am not confident that he has a realistic understanding of how his student loan rehabilitation program works, nor has he planned for the likely increase in monthly payments once the loans are no longer in a default status. Although the issues that caused his financial problems may have been beyond his control, Applicant did not begin to address his defaulted student loans until a year after he completed his SCA and was interviewed by a government investigator. He did not make payments on the other legitimate delinquent debts until after his hearing. He has not acted responsibly regarding his finances. AG ¶ 20(b) partially applies.

Applicant hired someone to dispute all of his debts. This does not constitute financial counseling. There are not clear indications that his financial issues are under control. AG ¶ 20(c) does not apply. I have considered his participation in a student loan rehabilitation program, but he has not yet completed it. At this juncture, Applicant's recent post-hearing payments towards his delinquent debts do not constitute adhering to a good-faith effort to repay his overdue creditors. He has only made an initial payment to each creditor. It is unclear with Applicant's monthly financial deficient whether he can maintain monthly payments. AG ¶ 20(d) does not apply.

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 surrounding this case. I have incorporated my comments under Guideline F 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 30 years old. Despite participating in a student loan rehabilitation program, at this juncture, he has an unreliable financial track record. He has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.k: | 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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge