



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



In the matter of:)
)
) ISCR Case No. 20-02959
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Pro se

November 4, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On December 7, 2020, the Defense Office of Hearings and Appeals (DOHA) 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 December 18, 2020, and requested a hearing before an administrative judge. The case was assigned to me on July 14, 2021. DOHA issued a notice of hearing on August 4, 2021, and the hearing was convened as scheduled on August 25, 2021. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered three exhibits, referred to as Applicant's Exhibits A through C, which were admitted without objection. Applicant also testified on his own behalf. The record

remained open until close of business on September 8, 2021, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted nothing further. DOHA received the transcript of the hearing (Tr.) on September 8, 2021.

Findings of Fact

Applicant is 35 years old and married with one child. He has a high school diploma and a little over a year of college. He holds the position of Senior Logistician for a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry.

The SOR alleges that Applicant has 3 delinquent student loan accounts totaling approximately \$69,354. In his Answer, Applicant admits each of the allegations and provides explanations. Credit reports of the Applicant dated May 28, 2020; and June 23, 2021, reflect that each of these debts was at one point owing. (Government Exhibits 5 and 6.)

Applicant began working in the defense industry in 2007. It was at that time that he was granted a security clearance. He started working for his current employer in 2013. He has never had any security violations of any sort. Except for his delinquent student loans Applicant has maintained good credit. He always paid his bills on time and lived within his means.

In about 2007, Applicant's older brother who was attending college asked the Applicant to co-sign for him on a student loan. Applicant was employed with a previous employer at the time and agreed to do it. Sometime later, Applicant learned that his brother defaulted on the loan.

In 2010, the creditor contacted the Applicant in an effort to collect payment of the debt. Applicant did not fully understand why they were calling him for payment and ignored the creditor. Applicant spoke to his brother about it, and his brother assured the Applicant that he was handling the situation. As time passed, Applicant thought that his brother was paying the loan debt. At some point Applicant learned that his brother had not paid the student loan debt and had no intention of paying the student loan debt. Applicant was angry with his brother, and for some time refused to speak to his brother. As time passed, Applicant eventually decided to resolve the matter himself, as he did not want the loan hanging over his head. Applicant looked into the matter to find out how much he owed and who he needed to pay. At that time, Applicant learned that he had not only co-signed for his brother for one loan, but unbeknownst to him he had co-signed a Master Release Form that allowed his brother to use Applicant's name as a co-signer on all of his student loans. Applicant stated that he decided to take action to resolve the debts. Applicant contacted the creditor to determine his available options. Applicant was told about the Co-signer Relief Plan, which allowed him to settle the debt for less than what was owed. This required the Applicant to make two lump sum payments of \$6,457, to close out all three accounts for a total of almost \$13,000. Applicant stated that he paid the creditor and resolved the three student loan accounts

he had co-signed for. Applicant testified that he has learned never to sign anything for anyone unless you fully understand what you are signing. (Tr. pp. 31- 32.)

Allegation 1.a., is a delinquent student loan debt that was charged off in the approximate amount of \$28,126. Applicant settled this debt under the Co-signer Relief Plan (discussed above) and it is deemed paid in full. (Applicant's Exhibit A.)

Allegation 1.b., is a delinquent student loan debt that was charged off in the approximate amount of \$27,807. Applicant settled this debt under the Co-signer Relief Plan (discussed above) and it is deemed paid in full. (Applicant's Exhibit B.)

Allegation 1.c., is a delinquent student loan debt that was charged off in the approximate amount of \$13,421. Applicant settled this debt under the Co-signer Relief Plan (discussed above) and it is deemed paid in full. (Applicant's Exhibit C.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 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 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.

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 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 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 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, as follows:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

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

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant co-signed for his older brother’s student loan. He was not aware of what he his obligations were under the contract. Applicant ended up signing a document that allowed his brother to use him as a co-signer on all of his student loans. When Applicant’s brother defaulted on his student loans, Applicant became responsible to pay them. Applicant became excessively indebted in the amount of \$69,354. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations 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, or 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.

Upon learning that his brother had defaulted on the student loan, and that Applicant would be responsible under the loan to pay the debt, Applicant took the necessary action to resolve it. This was a tough lesson. Although this was not easy to do, Applicant settled his brother's student loan debt paying out of pocket almost \$13,000 to get the debt resolved. Applicant acted in a reasonable and responsible manner. Applicant has shown good judgment, trustworthiness and reliability. There are clear indications that his financial indebtedness is resolved and under control. He has also demonstrated a good-faith effort to resolve his debts. AG ¶ 20(b) and 20(d) provide full mitigation. The Financial Considerations concern has been mitigated.

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 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 a mature, responsible, hardworking defense industry employee who shows great potential and who is well respected by those he works with. He clearly understands the great responsibilities he has in holding a security clearance. He has shown the requisite good judgment, reliability, and trustworthiness required of this privilege.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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:	FOR APPLICANT
Subparagraphs 1.a through 1.c	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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge