



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



In the matter of:)
)
) ISCR Case No. 20-01657
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*
10/12/2021

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns raised by his delinquent student loans. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on November 11, 2019. On October 14, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on January 19, 2021, and requested a hearing before an administrative judge (Answer). The case was assigned to me on April 30, 2021. On June 24, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 20, 2021, and it was convened as scheduled via video teleconference on the Defense Collaboration Services platform.

At the hearing, Government Exhibits (GE) 1 through 3 and Applicant Exhibits (AE) A through F were admitted without objection, and Applicant testified. I marked the June 11, 2021 case management order as Hearing Exhibit (HE) I; Department Counsel’s (DC) April 13, 2021 discovery letter as HE II; and DC’s exhibit list as HE III. DOHA received the transcript (Tr.) on July 28, 2021. During the hearing, upon Applicant’s request, I kept the record open until August 3, 2021, to provide him the opportunity to supplement the

evidentiary record. He submitted no additional materials, and the record closed on August 3, 2021.

Findings of Fact

Applicant is 31 years old, single, and has no children. He received an associate's degree in information technology in 2016. Since April 2021, he has worked for an automobile manufacturing company in production. This is his first security clearance application, and his employment with a defense contractor as a computer technician is dependent upon him obtaining a security clearance. (GE 1; GE 3; Tr. 11-13)

The SOR alleged that Applicant has 13 delinquent student loans, totaling \$50,783. In his response to the SOR, he admitted all of the allegations. The debts alleged in the SOR were confirmed by Applicant's credit bureau report (CBR) dated April 2019. (Answer; GE 2)

Applicant attributed his inability to make payments toward his student loan obligations to various periods of unemployment and insufficient income. Applicant was unemployed between August 2010 and October 2010; December 2013 and February 2014; December 2016 and February 2017; and June 2018 and October 2018. During these periods, he was either supported by his mother, savings, or unemployment benefits. Additionally, in March and April of 2020, he was laid off for seven weeks due to the shuttering of his factory because of the COVID-19 pandemic. During this period, he did not receive unemployment or his regular pay. (GE 1; GE 3; Tr. 14, 34; AE C to AE F)

Applicant incurred student loans between approximately 2008 and 2016. He attended school between 2008 and 2011, returned to school in 2013, and graduated in 2016. The notices for his loans initially were sent to his mother's house as she co-signed for his loans. At that time, he was not living with her, and it took her a couple of months to notify him of his mail; however, he did eventually contact his student loan creditors. He was told that his monthly student loan payments would be approximately \$500, which he could not afford. According to Applicant, he did make a few payments toward some of the smaller loans approximately 10 years ago. However, he could not recall how many payments he made, how much he paid toward the loans, and he failed to provide proof of any payments. (GE 1 at 10-11; GE 3 at 2; Tr. 21-23, 30)

In his November 2019 SCA, Applicant disclosed that he had delinquent student loans, but he "could not locate the necessary details on exactly how much [he] owe[d] and which providers [he] owe[d] which amounts. (GE 1 at 43).

During his December 2019 interview with a government investigator, Applicant indicated he had lost track of his student loan obligations, but he would make an effort to make payments toward his student loans once he had saved enough money. At the hearing, he testified that due to the COVID-19 pandemic, he was unable to make any payments. (GE 3; Tr. 23-24)

At the time of the hearing, Applicant was waiting to hear from his student loan creditors regarding a rehabilitation program for him to transition his loans from delinquent status into good standing. He could not recall when he contacted his creditors to initiate this program, nor had he signed any paperwork. (Tr. 20, 32)

According to Applicant, his student loans qualify for deferment under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. He failed to provide documentation to support this claim at the hearing or after the hearing. (Tr. 24, 31-32, 37)

At the time of the hearing, Applicant was earning \$18.95 an hour, which was \$3 to \$4 more than he had ever earned from a previous employer. With overtime, his net monthly income is typically \$3,000. The month before the hearing, he had a surplus of \$1,000, after he paid his bills. Additionally, in February 2021, Applicant hired a financial coach to help him manage his spending, eliminate bad financial habits, and create a budget. He did not provide a copy of his budget or details related to the financial counseling. (Tr. 24-29)

Applicant does not currently have any money in savings. He provided copies of his tax filings for tax years 2017 through 2020, and his annual federal adjusted gross income ranged between \$23,020 and \$31,233. He also provided statements for his car insurance and car loan, demonstrating these accounts were current and in good standing. (Tr. 30; AE A - F)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 the national security.”

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 concern under Guideline F (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

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.

The record evidence of Applicant's delinquent debts establishes the following disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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's various periods of unemployment and low income have negatively affected his ability to make payments toward his delinquent student loans, which total over \$50,000; however, he failed to demonstrate that he acted responsibly to address his student loans in response to his financial setbacks. Six months ago, he started receiving financial counseling; however, he failed to provide evidence of a written budget, nor did he demonstrate how the counseling service is helping him address or resolve his financial issues. He failed to provide evidence that he has made payments toward his student loans, nor has made a good-faith effort to resolve or enter a rehabilitation agreement. Nor has Applicant provided evidence that the CARES Act applies to his student loans. Even if he had provided documentation that his student loans are currently deferred by the CARES Act, his failure to act responsibly toward his student loans since at least 2016 casts doubt on his current reliability, trustworthiness, and good judgment. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) was not established.

