



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-03158
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: Leslie McAdoo Gordon, Esq.

12/13/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is granted.

Statement of the Case

On December 4, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct and 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 January 8, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 1, 2021. Applicant's attorney requested the case be scheduled on November 15, 2021, to accommodate her

schedule. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 21, 2021, scheduling the hearing for November 15, 2021. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 6. Applicant's attorney objected to GE 5. Her objection was overruled. There were no objections to the other exhibits, and they were admitted into evidence. Applicant and two witnesses testified on his behalf. He offered Applicant Exhibits A through DD, which were admitted without objection. DOHA received the hearing transcript on November 23, 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 56 years old. He immigrated to the United States in 1987. He had no family here at the time. He attended college on and off until he graduated in 1998 with a bachelor's degree. He suspended his college studies due to his finances. Due to learning English while in college, it was more difficult for him. He married in 1993. He became a citizen in 1997 and has a daughter from the marriage who recently completed her college degree. (GE 1; Tr. 39-48)

Applicant funded his college studies through student loans. In 1998, he began working at a car rental agency earning approximately \$28,000 annually. His wife did not work from 1993 to 1999. She began attending community college in 1999. In 2000, Applicant began getting behind in repaying his student loans. His elderly parents had immigrated to the United States in 2000 and were living with him. They lived with him until 2016. They are now in a senior facility, and he provides monthly support for them. In 2001, Applicant filed bankruptcy and had his debts discharged, except for his student loans. No other debts are alleged in the SOR, except his student loans. (Tr. 39-50, 111-112; GE 5)

From 1998 to 2010, Applicant continued to work at the car rental agency. He completed courses and earned certificates in his area of study. In 2010, Applicant found a job in his field. His wife also graduated from college and started working in 2012. From 2010 to 2015, Applicant worked for private companies. In 2015, he began working on a government contract. (Tr. 48-54; AE AA)

Applicant credibly testified that after he graduated from college, he made the minimum payments towards his student loans for two years. He then continued to make payments. The amount was less than the minimum payment required, but was what he could afford at the time. He testified his payments were consistent, but he skipped a couple payments in 2013. In 2015, he began earning more money and increased his payments, but was not caught up. He provided documents to show the payments he made from 2013 through January 2021. (Tr. 54-57, 67-68, 103-105; Answer; AE O. P, Q)

In 2017, Applicant's daughter began attending college. She received a partial scholarship, but Applicant and his wife paid the remaining balance. His wife's income was

allocated for their daughter's college expenses. His daughter graduated this year and will apply to medical school after taking a gap year. Applicant testified that his daughter will be responsible for her graduate school expenses. (Tr. 61-64)

In 2016, Applicant completed a security clearance application (SCA) and did not disclose he was behind on his student loans. He testified that he thought because he was making payments he did not have to disclose the student loans. He said the financial section of the SCA had things that did not apply to him and because the questions were grouped together he believed he was answering correctly. He was aware that the background investigation process would access his credit reports. He was not interviewed by a government investigator as part of his background investigation. Because he was granted a security clearance, he believed there were no issues regarding his student loans and his response. I found his testimony credible. (Tr. 58-61, 64-68, 93-98; AE CC)

In April 2019, Applicant completed another SCA. He did not disclose he had any delinquent debts in his SCA. He was interviewed by a government investigator in January 2020. He explained that he thought he only had to disclose debts that were being garnished. He credibly testified that he believed because he was making payments on his student loans he did not have to disclose them. He explained that there were so many subsections to the different questions he did not have a clear understanding and thought if he answered "yes" he was admitting all of the categories. He did not want to say "yes" because many things did not apply to him. He believed because he was making monthly payments, he was not delinquent. English is a second language for Applicant. (Tr. 64-68, 98-100; GE 1, 4)

In his answer to the SOR, Applicant admitted the allegation in ¶ 2.a that alleged he deliberately failed to disclose his delinquent student loans on her 2019 SCA. Applicant testified that he initially was going to deny the allegation. He then sought advice from his employer's corporate attorney on how to answer and was advised it was better to respond "yes" and then provide an explanation. This attorney did not have experience in security clearances. Applicant believed he received incorrect advice. The attorney acknowledged her inexperience in the area of security clearances and referred Applicant to his present attorney. When he responded, he did not think he was admitting that he deliberately failed to provide accurate information. I found Applicant's explanations credible. I believe he made an honest mistake, received incorrect advice, and did not deliberately fail to disclose the status of his student loans. (Tr. 99-103; Answer to SOR)

Applicant testified that in February 2020, after his background interview, he contacted the Department of Education (DOE) regarding bringing his loans current. He was told he could pay the total amount owed or participate in a rehabilitation program. It took months for his rehabilitation program to be approved. He continued to make his payments while waiting for DOE to respond. His application was approved in January 2021. He is to make payments of \$796 a month. He made his first payment in January 2021, and also paid an additional \$250. He was advised in February 2021 that his loans were rehabilitated and transferred to a new loan servicer. DOE would contact the credit bureaus to delete the record of default from his credit report. Due to the COVID-19

pandemic, student loan payments were in forbearance from March 2021 until September 2021. It was extended in September 2021 until January 2022. Applicant resumed payments in May 2021 and has made them consistently as required, even though he is entitled to have the loans in forbearance. (Tr. 69-84; GE 2, 3, 6; AE A, B, C, D, E, F, G, H, I, J, K, L, T, V, W, Z)

Applicant provided a copy of his current budget, which includes his student loan payments. He also provided receipts to show he is timely paying his monthly expenses. (AE X) He provides his parents \$350 to assist with their expense. Applicant recently took classes so he could become certified as a title insurance inspector and earn additional income. He has been working in this part-time capacity for about four or five months. He earns about \$400 to \$600 a month in this job. His wife has about \$15,000 in savings and he has a pension account with about \$16,000 in it. Now that his daughter has graduated from college, his expendable income has increased, and he is more secure financially. He intends to repay his student loans and will do so regardless of his security clearance status. (Tr. 84-92; 114-115; AE X, DD)

Character witnesses testified on Applicant's behalf. Both have held security clearances for many years and have worked with Applicant. They opined that he is honest and truthful and is respected by his coworkers. He has a high level of integrity. Both noted that because English is a second language sometimes it takes him longer to understand certain words. (Tr. 22-39)

Character letters from people who have known him for many years attest to Applicant's honesty, truthfulness, and integrity. He is a model coworker and employee who is careful and meticulous regarding his work. He is a valued employee who has a strong work ethic and a loyal commitment to his family. (AE BB)

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

Applicant had two delinquent student loans that he was unable 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had two delinquent student loans. After completing college, he made minimum payments for two years until he was unable, so he made lesser payments. He provided documents to show he made payments throughout the years and increased payments when he got a better paying job. During this time, he supported his parents who were living with him. He did not believe the loans were a security concern because he was making payments, albeit less than required. When he learned his student loans were a security concern, he immediately contacted DOE, completed the application process to rehabilitate the loans and is in a repayment plan. He has made consistent payments as required and made payments during the COVID-19 forbearance period. Applicant was underemployed and taking care of his elderly parents. These were conditions beyond his control. He was also providing for his daughter's education, which was within his control, but is hardly a frivolous expenditure. Applicant did not ignore his financial obligation to repay his student loans, but rather paid what he could afford at the time. He acted responsibly under the circumstances. AG ¶ 20(b) applies. Applicant provided documentation of his payments throughout the years and his more recent payments under his rehabilitation agreement. I find his conduct is unlikely to recur and

does not cast doubt on his current reliability, good judgment, and trustworthiness. AG ¶¶ 20(a) and 20(d) apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Based on the evidence noted above, I find that Applicant did not deliberately omit, conceal, or falsify his SCA by failing to disclose the status of his student loans. I find in his favor under the Personal Conduct Guideline.

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 Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant met his burden of persuasion. He has established a reliable financial track record. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations and refuted the security concerns raised under Guideline E, personal conduct.

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-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge