



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-00734
)
Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq. Department Counsel
For Applicant: *Pro se*

12/16/2021

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 July 13, 2021, the Defense Counterintelligence and Security Agency 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On July 30, 2021, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on September 10, 2021. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 6. Applicant submitted a timely response. There were no objections by Applicant, and all Items are admitted into evidence. Applicant provided documents that are marked as Applicant's exhibits (AE) A through F. There were no objections and they are admitted into evidence. The case was assigned to me on October 26, 2021.

Findings of Fact

Applicant denied the SOR allegations in ¶¶ 1.a through 1.c, and admitted the allegation in ¶ 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. He married in 2004 and has four adult children and two stepchildren. He earned an Associate's degree in 1988. He has owned a home since 1999, and moved to his current home in 2014. He has worked for the same employer since 1995. From 1995 to 2015, he was employed by the corporation. In 2015, the corporation outsourced Applicant's job, and he was hired by the new contractor and remained in the same location. He has held a security clearance since 2008. (Item 3)

In October 2020, Applicant completed a security clearance application (SCA). He disclosed a delinquency on his mortgage and no other delinquent debts. He explained that three significant events impacted his finances. When his job was outsourced in 2015, he took a substantial reduction in income. Second, in September 2016, his wife resigned from her job due to illness. Third, in July 2016, his home was reassessed, which led to a significant increase in property taxes and his mortgage payment. He subsequently sought a modification of the mortgage, took a part-time job, and worked overtime. (Item 3)

Applicant did not disclose the alleged delinquent student loans on his SCA, but he did acknowledge them during his November 2020 background interview. He told the government investigator that the student loans were for his son's college education. He could not provide an explanation for why he fell behind on repaying the loans, but acknowledged the debts and intended to look into them and resolve them. (SOR ¶ 1.a-\$52,536 and ¶ 1.b-\$36,849). An additional student loan was alleged (SOR ¶ 1.c-\$33,773) that was for his daughter. It does not appear that loan was addressed during his background interview. (Items 3, 4, 5, 6)

The SOR alleges three delinquent student loans that total approximately \$123,157 and a credit card delinquency of \$2,798. In Applicant's answer to the SOR, he explained the student loans in SOR ¶¶ 1.a and 1.b were taken out for his son's education in August 2015 and August 2016. The delinquent student loan in SOR ¶ 1.c was obtained for his daughter's education in September 2011. (Items 1 and 2)

In his answer, Applicant denies his own responsibility for the three student loans. The credit reports reflect the loans as individual accounts in Applicant's name. Applicant indicated in his answer that the loans should be in his children's names and that his wife

handled most of the financial issues associated with the children's college applications, and he was unaware that he was listed as solely responsible for the loans. He also indicated he was unaware the loans were delinquent and did not become aware until he was confronted with them during his background interview. He stated in his SOR answer that he was disputing all three student loans and he will pay them if his dispute is unsuccessful. Applicant admitted the credit card debt in SOR ¶ 1.d. He explained that the creditor for this debt changed its name, and he was unclear as to where to send his payments. He attempted to contact the old company and was unsuccessful. He then lost track of the debt. He said he planned on settling the debt with the creditor. (Items 2, 4, 5, and 6)

In Applicant's response to the FORM, he provided two statements (AE B, G). In the first statement (AE G dated September 24, 2021) he said he was disputing the three student loans on his credit report. He contacted the Department of Education (DOE) and was informed his loans were being handled through a collection agency under contract with DOE. He was provided by DOE, a copy of the original promissory notes and an application for forgery, in the event he believed the signatures were not his. He said he made repayment arrangements with the DOE collection agency pending the resolution of his dispute. Applicant further stated that he intended to assist his children with the student loans and said he did not know he was responsible for paying them. Regarding the credit card debt, he provided a copy of a judgment entered against him in January 2021 (\$2,925) and a copy of a garnishment order from June 2021, requesting a deduction be made from his pay. (AE G, I)

In Applicant's second statement provided in his FORM response, dated October 8, 2021, he explained various discrepancies indicating the signature of the promissory notes did not belong to him. He stated:

My point is; I clearly did not review, fill out, sign, nor provide this information for these applications. Was there verbal consent between my wife and I? Yes, I'm quite sure but, under the pretense we (my wife and I) would assist our children with these loans to help further their education. No details on the loan amounts, whether they were approved, nor when payments were due was shared with me. I did not know I was being held solely responsible until, this surfaced during my most recent clearance renewal. Again, I am not denying responsibility nor, did I ignore it. This is something I just was not aware of. Regardless, I'm still committed to correcting this debt but, in my opinion it should not be on my record as sole debtor. (AE B)

Applicant further stated that he decided to forfeit and waive any claim of forgery since he did not wish to discharge the loans. He said he contacted the DOE collection agency to initiate a payment arrangement, but was waiting for his wife to provide her last two pay stubs, so an amount could be finalized. He provided no proof that any payments have been made at this time. (AE B)

Applicant provided a letter from DOE from September 2021 that states federal regulation provides the authority to discharge a borrower's loan if the borrower's eligibility to receive the loan was falsely certified as a result of the crime of identity theft. (AE E) It further stated:

A borrower is not eligible for loan discharge if it is determined that the student materially benefited from the proceeds of the loan. A student is considered to have materially benefitted from the proceeds of the loan if he or she attended the school for the period of the loan and incurred a tuition liability that was paid in whole or in part by the loan proceeds. (AE E)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

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 has three delinquent student loans totaling approximately \$123,157 and a judgment for a delinquent credit card. 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 persons 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 claim that he was unaware that he was responsible for the student loans for his children's education is disingenuous and not credible. He acknowledged the student loans when confronted with them during his background interview and indicated he would address them. Applicant said his wife handled the children's college applications and the financial aspects. They had a "verbal" agreement, but "under a pretense we (my wife and I) would assist our children with these loans to help further their education." That "pretense" is not part of a student loan agreement. His failure to read the promissory note or make himself aware of his obligations does not bind the DOE to waive Applicant's obligations. His expectation of who would repay the loans within his family is a private matter outside the scope of the loan agreement. Applicant did not provide a statement from his wife that she misled him, and he is not pursuing identity theft or forgery charges against her. His children received the proceeds from the student loans and attended college. Applicant did not provide any information that he made his children aware that they would be responsible for paying the student loans he obtained for them. Regardless, his name is on the promissory notes and he is responsible for paying them. Although he

is pursuing payment arrangements with the collection agency, they have not been finalized and he has not made a payment.

Applicant admitted the delinquent credit card debt. He said that when the creditor changed names, he had difficulty paying it and then he lost focus on the debt. The debt was reduced to a judgment and a garnishment order has been issued.

AG ¶ 20(a) does not apply to Applicant's debts because they are recent and ongoing. Applicant's failure to pay the delinquent student loans and credit card were not beyond his control. His failure to read the promissory note and understand that he had obligated himself to pay the student loans was within his control. He did not address his credit card debt and it subsequently went to judgment. There is insufficient evidence to conclude that Applicant acted responsibly under the circumstances. AG ¶ 20(b) does not apply. No evidence was provided to show he has received financial counseling. There is some evidence that Applicant has contacted the collection agency for the student loans to make payment arrangements, but that has not been finalized and no payments have been made to date. In addition, the credit card debt is subject to a garnishment order. Garnishment is not considered a good-faith effort to repay a creditor. At this juncture, AG ¶ 20(c) has minimal application, and AG ¶ 20(d) does not apply.

Applicant stated he was going to dispute the student loans with the credit bureaus, but then apparently decided not to. His expectation that his children should pay for the student loans that he obtained for their benefit is a family matter outside the terms of the loans. AG ¶ 20(e) does not apply.

It is noted that Applicant's most recent credit report from March 2021 shows that student loans are in forbearance as a result of the pause in collection of student loans during the COVID-19 pandemic. While the President's actions effectively place Applicant's student loans in deferment status, it does not excuse his past inactions in the context of security clearance eligibility. The loans in SOR ¶¶ 1.a and 1.b first became delinquent in February 2018, two years before the COVID-19 deferment. Applicant provided no evidence of steps he took to address the delinquencies prior to then.

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;

