



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



In the matter of:)
)
) ISCR Case No. 20-02960
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for a security clearance is denied.

Statement of the Case

On December 7, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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), implemented by DOD on June 8, 2017.

Applicant elected in his response to the SOR (Answer, Item 2) to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on April 27, 2021. A complete copy of the file of relevant material (FORM) was

provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 11, 2021, and he responded to the FORM on June 3, 2021 (FORM Response). The case was assigned to me on July 16, 2021. The Government's documents identified as Items 1 through 7 are admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 48 years old, married, and he does not have any children. As of his October 2019 security clearance application (SCA), he owned a home in state A since October 2017; he previously owned a home in state B from 2007 to October 2017. (Items 1, 2, 3; FORM Response)

Applicant graduated from high school in 1991. He earned a bachelor's degree in 2017. As of his October 2019 SCA, he worked as a developer for his employer, a DOD contractor, since February 2017. He worked for a previous DOD contractor from January to June 2015. He was a self-employed consultant from February to August 2013. He briefly served in the U.S. Army Reserve in 1993 and was medically discharged. He has previously held a security clearance. (Items 3, 7; FORM Response)

The SOR alleged that Applicant had 13 delinquent student loans totaling \$73,659 (SOR ¶¶ 1.a - 1.k, 1.m - 1.n) and a \$698 delinquent consumer debt (SOR ¶ 1.l). In his Answer and during his 2020 background interviews, Applicant acknowledged his delinquent student loans and stated that he was unsure what the debt in SOR ¶ 1.l was for. All of Applicant's delinquent student loans are listed on his November 2019 credit bureau report. The student loans in SOR ¶¶ 1.a - 1.k and the debt in SOR ¶ 1.l are listed on his August 2020 credit bureau report. All but one of Applicant's delinquent student loans, totaling \$72,858, are listed on his April 2021 credit bureau report. Applicant also discussed his delinquent student loans during his 2020 background interviews. (Items 1, 2, 4, 5, 6, 7)

During his 2020 background interviews, Applicant attributed his delinquent student loans to his 2013 period of self-employment. In his Answer and FORM Response, he stated that his student loans remained delinquent because he was financially supporting his sister-in-law, who was disabled and not yet approved for disability benefits, in addition to his best friend, who had difficulty finding employment during the COVID-19 pandemic. In his FORM Response, he stated that his spouse was disabled and required assistance with daily activities, which Applicant, at times, had to pay for; his home required repair after it was damaged by a tornado in 2019, and he was in the process of appealing his denied insurance claim; and he and his spouse spent their savings after Applicant's security clearance was suspended and he lost his job. (Items 2, 7; Form Response)

Applicant stated in his Answer that he and his spouse had one remaining car payment due in January 2021, after which time they would have at their disposal \$5,000 to apply toward their delinquent debts. In his FORM Response, Applicant stated that he

secured new employment and built up his savings. He stated that he stopped providing financial assistance to his friend, who was able to find employment. He stated, without providing corroborating documentation, that he started paying his delinquent student loans and planned to increase his monthly payments. He stated that he moved his sister-in-law, who had secured Medicare coverage and applied for disability benefits, to live with him and his spouse to consolidate living expenses. He submitted no evidence to show he received financial counseling, is following a budget, or engaged any debt consolidation services. (Items 2, 7; FORM Response)

Policies

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 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(a), 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 access to classified information 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(a), an “inability to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations” apply. Applicant was unable to pay his student loans and consumer debt.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following relevant:

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b); however, Applicant must provide evidence that he acted responsibly under his circumstances. Applicant has not provided documentation to corroborate his claims of payment toward his delinquent student loans. He did not provide sufficient proof of any efforts he made to resolve his outstanding debts. AG ¶¶ 20(a) 20(b), 20(c), and 20(d) are not established.

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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.n:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge