



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

In the matter of:)
)
) ISCR Case No. 21-01077
)
 Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
 For Applicant: *Pro se*

03/24/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for a security clearance is granted.

Statement of the Case

On June 11, 2021, 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 August 6, 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 August 10, 2021, and he responded to it on August 27, 2021 (FORM Response). The case was assigned to me on October 6, 2021. The Government's documents identified as Items 1 through 7 are admitted in evidence without objection.

Findings of Fact

Applicant denied all of the SOR allegations in his Answer. He is 59 years old. He married in 1987, divorced in 1989, remarried in 1992, divorced in 2001, and remarried in 2008. He has four children--two adults and two minors. (Items 2, 3, 4)

Applicant graduated from high school in 1982. He served in the U.S. military from 1983 to 1985, and was discharged under other than honorable conditions for testing positive for illegal drugs. He earned a bachelor's degree in 2007 and a master's degree in 2008. He worked for previous DOD contractors from January 2010 to March 2019 and September to November 2019. He was unemployed from November 2019 to January 2020. As of his February 2020 security clearance application (SCA), he worked as a program analyst for his employer, a DOD contractor, since January 2020. He was first granted a security clearance in 1983. (Items 3, 4, 7)

The SOR alleged that Applicant had 13 delinquent student loans totaling \$80,254 (SOR ¶¶ 1.a - m) and a \$150 delinquent consumer debt (SOR ¶ 1.n). Applicant's April 2020 credit bureau report lists all of the SOR debts. Applicant's November 2020 credit bureau report lists the student loans in SOR ¶¶ 1.a to 1.h, and reflects that Applicant paid SOR ¶ 1.n in July 2020. Applicant disclosed delinquent student loans totaling \$20,000 on his 2020 SCA, and he also discussed his delinquent student loans during his April 2020 background interview. In 2014, Applicant petitioned for Chapter 7 bankruptcy and his debts of approximately \$10,000 were discharged. (Items 2, 3, 4, 5, 6)

In his SCA, interview with a background investigator, Answer, and FORM Response, Applicant attributed his delinquent student loans to: (1) his three-month period of unemployment from November 2019 to January 2020, when he financially supported himself through unemployment benefits; and (2) being the sole wage-earner supporting his spouse and children, with an annual income of \$51,000 to \$78,000 from approximately 2017 to 2020, in a state with a high cost of living. (Items 2, 3, 4, 5, 6, Form Response)

Applicant indicated in his Answer, SCA, background interview, and Form Response that his annual income increased to \$93,000 in 2020 and then to \$110,000 in 2021. He stated that with his annual income increase, he stabilized his student loans through online credit counseling and financial budgeting. He stated that he was also actively seeking a second job to continue to resolve his financial difficulties. He provided documentation, with his Answer and FORM Response, reflecting that his student loans are current. Specifically, he has two student loans with Navient that were disbursed in

July 2006 and carry a total balance of \$27,787. Both loans were in good standing as of June 2021, and his monthly payments were \$169. His student loan with KHESLC, which carried a balance of \$26,767 as of August 2021, was in forbearance from April 2021 to 2022, and then in a graduated extended repayment plan with monthly payments of \$127 scheduled to begin in May 2022. His student loans with the U.S. Department of Education, with a total balance of \$23,099 as of June 2021, were in rehabilitation with a monthly repayment amount of \$397, and payments were deferred during the COVID-19 pandemic. Applicant also provided documentation reflecting that he made payments toward his delinquent student loans with KHEAA and Navient from 2020 to 2021, prior to receiving the SOR. (Items 2, 3, 4, Form Response)

Applicant provided a copy of his budget with his Answer. He stated in his FORM Response that he has diligently worked to improve his credit and he intends to continue to resolve his student loans and meet his financial obligations. (Items 2, 3, 4, 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), Applicant must provide evidence that he acted responsibly under his circumstances. Applicant paid his consumer debt and he provided documentation to corroborate his claims of payment toward his delinquent student loans. AG ¶¶ 20(a) 20(b), 20(c), and 20(d) are 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 without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that 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 - 1.n:	For Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge