



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 20-00592
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/25/2022

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. There is sufficient evidence to establish that his various student loans are in good standing or in repayment. Accordingly, this case is for Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, in May 2018. (Exhibit 1) The automated version of the SF 86 is the e-QIP. More plainly, the SF 86 is commonly known as a security clearance application.

Thereafter, on July 27, 2020, after reviewing the available information, the DoD Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar in form and purpose to a complaint, which is the initial pleading that starts a civil

action; in some states this pleading is known as a petition; and in criminal law it is a formal charge accusing a person of a criminal offense. Here, the SOR detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on September 10, 2020. He denied the factual allegations in the SOR. He requested a hearing before an administrative judge. Department Counsel indicated they were ready to proceed on July 15, 2021. Shortly thereafter, the case was received in the Washington Hearing Office, and it was assigned to me on November 29, 2021.

The hearing took place as scheduled on January 24, 2022. Applicant appeared without counsel. Both Department Counsel and Applicant offered documentary exhibits, which were admitted as Government Exhibits 1-4 and Applicant Exhibits A-G. Applicant was called as a witness and was subject to cross-examination by Department Counsel.

At the conclusion of the hearing, I kept the record open until February 25, 2022, to allow Applicant to provide additional documentation concerning his student-loan accounts. He made a timely submission on February 3, 2022, those two documents are admitted as Applicant Exhibits H and I, and the record closed.

Findings of Fact

Applicant is a 29-year-old employee who is seeking eligibility for access to classified information for his job as a Linux system administrator for a company in the defense industry. He has been so employed since April 2018, and this is the first time he has applied for a security clearance. He had a full-time job as a system administrator for a different company during 2014-2018. Before that, he had a part-time job as a web developer via a work-study program during 2012-2014. He was a university student during 2010-2016, and he was awarded a bachelor's degree in 2016. He is single with no children although he is engaged to be married in 2022.

The SOR alleges a history of financial problems consisting of eight delinquent student-loan accounts in amounts ranging from \$2,718 to \$46,335 for a total of about \$86,948. The three accounts with Navient are alleged to be charged off while the five accounts with the Department of Education are alleged to be in collection. Although Applicant formally denied the allegations in his answer to the SOR, he does not deny obtaining the loans but instead takes issue with the status of the various accounts. As alleged in the July 2020 SOR, the eight delinquent student loans are established by credit reports from July 2018 and October 2019. (Exhibits 4 and 3, respectively)

A more recent credit report, offered by Department Counsel, from July 2021 shows an improving situation. (Exhibit 2) The report shows ten student loans with the Department of Education/Nelnet (which is a federal student loan servicer working on behalf of the Department of Education) are in good standing. (Exhibit 2 at 1-4) The ten accounts have balances in amounts ranging from \$1,332 to \$4,446 for a total of about \$27,876; none the accounts are past due; the status for all accounts is paid as agreed;

and the date of last payment for all accounts is June 2021, the month before the credit reported was obtained.

The three charged-off student loans with Navient are included in the July 2021 report too. (Exhibit 2 at 5-6) The largest was charged off in the amount of \$41,590 and had a current balance of \$44,853. The last payment on the account was made in March 2021. The second was charged off in the amount of \$14,983 and had a current balance of \$15,483. The last payment on the account was made in March 2021. The third was charged off in the amount of \$5,519 and had a current balance of \$0, as it is a paid charged-off account. The last payment on the account was made in November 2020. In summary, the July 2021 credit report shows Applicant had a total balance of about \$60,336 on two accounts with Navient and the third account was paid.

Note, the July 2021 credit report also shows two student loans with Sally Mae, both are being paid as agreed, and both are joint accounts (with Applicant's parents as far as I can determine). Likewise, Applicant Exhibit I pertains to the two Sally Mae loans, which are not alleged in the SOR or at issue in this case.

Applicant provided more up to date information at the hearing via a January 2022 credit report. (Exhibits A and B) The credit report shows all his accounts are in good standing as follows: (1) a reported balance of \$4,544 for four credit-card accounts, three of which have \$0 balances; (2) a reported balance of \$0 for no collection accounts; (3) a reported balance of \$52,030 for 12 student loans (the two Sally Mae loans, which are not at issue, and 10 loans with the Department of Education/Nelnet; the latter total about \$27,876; (4) a reported balance of \$0 for auto loans; and (5) a reported balance of \$356,059 for a mortgage loan for a recent purchase of a home. The three student loans with Navient are not reflected in this credit report, and they may have aged off. All ten student loans with the Department of Education/Nelnet are in good standing as are the two Sally Mae loans.

In addition to the credit report, Applicant presented a January 18, 2022 letter from the Department of Education concerning his student loans. (Exhibit C) The letter is verification that his loans were transferred to a new loan servicer (likely Nelnet) due to Applicant's rehabilitation of the loans. The letter also informed Applicant that the Department of Education had notified the national credit bureaus to delete the record of default from his credit record, and that he was eligible for all the benefits associated with the rehabilitated loans before default.

In his post-hearing documentation, Applicant presented proof of payment on the three charged-off student loans with Navient. (Exhibit H) It shows Applicant made 11 payments during 2020 for an account ending in 5368, which resulted in paying off the charged-off account mentioned above. He made 10 payments during 2020-2021 for an account ending in 1574. And he made 10 payments during 2020-2021 for an account ending in 9508. Altogether, the payment history shows Applicant paid a total of \$8,735, with \$5,214 applied to principal, \$3,268 applied to interest, and \$252 applied to fees. The outstanding balance on the two unpaid charged-off loans is \$62,751, which is consistent with the \$60,336 balance reflected in the July 2021 credit report discussed

above. Note, the Navient account numbers in Exhibit H appear to match the Navient account numbers in the credit reports from 2018, 2019, and 2021. (Exhibits 4, 3, and 2, respectively)

In addition to the student loans, Applicant presented documentation showing his overall financial responsibility. Recalling the January 2022 credit report, it shows all of Applicant's financial accounts are in good standing and that he has no collection accounts or public records. (Exhibits A and B) Applicant qualified for and obtained a mortgage loan to purchase his first home in December 2020. (Exhibit D) The mortgage loan was for \$363,298 to purchase a \$370,000 home with a monthly loan payment of \$2,116. (Exhibits B and D) He owns a car, but he wisely bought a used 2017 Honda for cash for less than \$15,000, plus sales tax and fees, in December 2020. (Exhibit G)

Applicant has a good income and has shown an ability to increase his earnings. His 2018 W2 shows he earned \$58,285 in wages; his 2019 W2 shows \$89,120 in wages; and his 2020 W2 shows \$89,329 in wages. (Exhibit E) Recent leave and earnings statements show he earned a gross income of about \$101,241 in 2021. (Exhibit F)

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.¹ As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."² Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.³ The Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.⁴

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

² 484 U.S. at 531.

³ 484 U.S. at 531.

⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.⁵ Under the Directive, the parties have the following burdens: (1) Department Counsel has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted; (2) an applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven; and (3) an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁶

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is set forth in AG ¶ 18 as follows:

Failure or inability 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. . . .

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties that is sufficient to raise a security concern under Guideline F. The disqualifying conditions noted above apply.

⁵ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

⁶ Directive, Enclosure 3, ¶¶ E3.1.14 and E3.1.15

Applicant has mitigated the security concern stemming from his history of delinquent student loans under AG ¶ 20(d). As found in the findings of fact, the five federal student loan accounts in collection were successfully rehabilitated and are now in good standing. (Exhibits 2, A, B, and C) Concerning the three charged-off accounts with Navient, one account was repaid and the other two accounts are in repayment. (Exhibits 2 and H) Together, this shows Applicant is no longer neglecting his student loans and is taking the matter seriously. There is also ample evidence to show Applicant is conducting his financial affairs responsibly. The most recent credit report from January 2022 shows all his accounts are in good standing and he has no collection accounts or public records. (Exhibits A and B). His finances were of sufficient quality to allow him to qualify for a mortgage loan of more than \$350,000 to purchase his first home in late 2020. (Exhibit D) He demonstrated common sense and good judgment when he bought a used 2017 Honda for cash as opposed to financing an expensive new automobile with a huge monthly loan payment. (Exhibit G) He is earning a good income and it appears he has sufficient cash flow to meet his financial obligations. (Exhibits E and F) Although he did not present a perfect case in mitigation, Applicant has made a measurable good-faith effort to resolve his delinquent student loan accounts per AG ¶ 20(d).

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a – 1.h: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for access to classified information. National security eligibility is granted.

Michael H. Leonard
Administrative Judge