



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01622
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

03/08/2022

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 October 7, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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; 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.

On October 13, 2020, Applicant requested additional time to respond to the SOR so he could receive and gather documents and prepare his answer. He was granted an extension until December 14, 2020. Applicant's answer to the SOR was undated. He requested a hearing before an administrative judge. The case was assigned to me on

December 15, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 10, 2022, scheduling the hearing for January 26, 2022, by Microsoft Teams. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 8. Applicant testified and offered Applicant Exhibits (AE) A and B. There were no objections. All exhibits were admitted into evidence. The record remained open until February 15, 2021, to permit Applicant an opportunity to provide additional evidence. He timely provided AE C through H, which were admitted into evidence without objection, and the record closed. DOHA received the hearing transcript on February 4, 2022.

Findings of Fact

Applicant denied 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 38 years old. He married in 2003 and divorced in 2009. He has an adult child from the marriage. He remarried in 2015 and has no children from the marriage. (Transcript (Tr.) 18-20; GE 1

In September 2019, Applicant completed a security clearance application (SCA). He disclosed he worked full time as a 1099 subcontractor from 2012 to 2018 for a federal employer. He also said he worked full time for his own business, Company Y. He clarified this in his testimony. During 2019 he worked part time for this employer, but also was working for his own business, Company Y. He testified that he started Company Y as a private business in 2011, but it did not become viable and profitable until about 2018 when he began receiving federal contracts. He continued for a period to work as a subcontractor, but at some point after 2018, he worked full time for his business. He is now a full-time employee and owner of Company Y. He said from 2018 to 2020 his company hired employees (3) and was not earning a lot of money. Applicant's wife is a co-owner of the company with 51% of the share. His 2021 income was at least \$155,000 and likely a bit more, but he did not know the exact amount. His wife's income from the business was \$135,000. He was unsure of his earnings in 2020 and 2019. He said in 2017 he earned about \$60,000 as a subcontractor. He provided a copy of his 2018 IRS 1040 showing his income before taxes was approximately \$31,352. He did not provide IRS 1040s for previous or subsequent years. (Tr. 20-26, 52-54; GE 1; AE H)

The SOR alleges Applicant is indebted to the Department of Education (DOE) for 10 collection accounts for student loans totaling approximately \$39,252. These loans were obtained from 2012 to 2014. (SOR ¶¶ 1.a-\$5,776; 1.b-\$5,050; 1.c-\$4,717; 1.d-\$4,518; 1.o-\$5,624; 1.p-\$4,397; 1.q-\$2,626; 1.r-\$2,626; 1.s-\$1,315; and 1.t-\$2,603). (Tr. 82; GE 1 through 8)

The SOR also alleges Applicant is indebted to another student loan creditor, XYZ and has eight collection accounts totaling approximately \$20,204. These loans were

obtained from 2003 to 2006. (SOR ¶¶ 1.e-\$3,808; 1.f-\$3,513; 1.g-\$2,636; 1.h-\$2,620; 1.i-\$2,230; 1.j-\$1,959; 1.k-\$1,755 and 1.l-\$1,683). (GE 1 through 8)

In Applicant's September 2009 SCA, he disclosed he graduated high school in 2001. He attended college from 2001 to 2004, but did not earn a degree. He attended a vocational school from July 2007 to November 2008 and earned a master's license. He stated that he had four classes to complete to earn his Associate's in Arts degree, which he intended on completing in the spring semester. (Tr. 18-19; GE 2)

In the financial disclosure section of his 2009 SCA, Applicant disclosed that he had defaulted on a loan in July 2009 to his state's student-loan authority. He stated:

I took our student loans during [c]ollege to pay for my tuition and books and after leaving college I was unable to pay back the loan. I have made large sum payments over the years, but defaulted about a year ago. I made payment arrangements with them 6 months ago and am in the process of paying the full loan amount back with [interest]. I never intended to default on this loan but I was just making ends meet and couldn't afford to make the monthly payment. I am now in a financial position to repay the loan.

A September 2009 credit report (GE 7) reflects eight delinquent student loans obtained from 2003 to 2006 for a total of approximately \$19,472. The last payments made were in October 2008 and September 2009. Applicant testified that he made lump sum payments towards the loans, but could not afford to repay them. He explained the lump sum payments were his income tax refunds that were withheld by the IRS and applied to his student loan debt. He believed this happened in 2017, 2018 and 2019, but was uncertain. These amounts decreased his balance, but did not satisfy it. He said these amounts would have been sufficient to cover his monthly payments. (Tr. 57-64; GE 7)

Applicant testified that there were periods of time between 2006 and 2018 that he was enrolled in college and the loans would have been deferred. In September 2019, Applicant completed another SCA for reinvestigation. In it he disclosed he has been attending college from 2011 to the present. Applicant provided a narrative in a post-hearing document with an explanation and a copy of his academic student transcript. (AE D, E) He explained it showed the semesters he received credit toward an undergraduate degree from 2011 to 2018. The document does not detail what semesters he was in school and when his loans would have been deferred prior to 2011, except as he previously noted. He further explained that from 2018 until the present he has been unable to earn additional credits toward a degree, but intends to start in the fall of 2022. (Tr. 61-62, 65; GE 1, 2)

Applicant's college transcripts reflect the following:

2011-credits transferred in the fall of 2011 from previous college. No specific prior years' attendance is detailed.

2012-spring term-two classes.

2013-spring term-one class.
2013-summer term-two classes.
2013-fall term-one class.
2014-spring term-two classes.
2014-fall term-two classes.
2018-fall term-one class.

In the financial disclosure section of his 2019 SCA, he disclosed he was currently over 120 days' delinquent to a student-loan agency. He disclosed the amount owed was \$35,000. He stated: "Unable to pay all bills and student loans while starting a business." (GE 1) He further stated: "Working on consolidation loan with provider to remove loans from default status and begin repayment." (GE 1) He listed as the date the financial issue arose as January 2018 and the date it was resolved as September 2019. He stated: "Provided tax refunds to be applied to student loan debt yearly. Working with provider to establish consolidation loan and remove from default status." (Tr. 64; GE 1)

Applicant was interviewed by a government investigator in October 2019 as part of his background investigation. During the interview he confirmed that he had student loans with DOE and XYZ. He said he owed DOE approximately \$35,895 and he had inadvertently failed to disclose the debt to XYZ on SCA. He believed he owed XYZ about \$19,535. He was researching consolidating the loans and participating in a loan rehabilitation program. Applicant stated his loans were in forbearance when he attended college in 2016, and he estimated his last loan payment was made in 2016. He believes the DOE accounts have been in and out of collection since 2018 and the XYZ accounts since 2017. He said his monthly payments were \$450, but was unable to provide the investigator with details about his payments. Applicant did not provide evidence he made the monthly payments of \$450. He told the investigator that he intended to consolidate his student loans by December 2019. He testified that he did not make any payments on these loans from 2017 to September 2020. (Tr. 83-86, 90-91; GE 3, 5)

Applicant further explained to the investigator that he started his own business in January 2018 and experienced financial problems. He said he had to pay the business first and then take what was left to pay himself. He was not receiving a consistent dollar amount each paycheck. However, he was now in a better financial situation because his business had improved, and he was willing to pay his debts. (GE 3)

Applicant was asked by the investigator about a cash withdrawal on September 2018 from a bank in the amount of \$16,000. Applicant explained this was to purchase a boat for the business. Applicant testified that his business is in the maritime industry and the boat is required. (Tr. 104-106; GE 3)

Applicant's credit report from April 2020 reflects his XYZ student loans were in default in 2015. The DOE were in default from 2017. He testified that he believed he was in school, so the loans should have been deferred. He then explained that they likely were in default in 2018-2019 because he was investing in his business and prioritized payments to his employees. He estimated that over the years, but more in the past few

years, he invested between \$75,000 and \$150,000 in the business. The business began to become profitable around 2020. His February 2021 credit report lists the DOE student loans in collection. (Tr. 64-72, 93-96; GE 5, 7)

Applicant was asked what action he took after his October 2019 interview to consolidate and pay his delinquent students loans, and he said he was researching his options. Applicant provided a copy of a letter from the collection company for his DOE student loans dated October 14, 2020, acknowledging his September 11, 2020 request to rehabilitate his student loans. He included the account numbers of the DOE loans and the current balances owed including interest and collection costs. The total amount was \$46,236. As part of the rehabilitation program, Applicant was required to pay \$5 a month for nine months. Due to the CARES Act in response to the COVID-19 pandemic, his loans were placed in forbearance. When asked if he made any of the \$5 monthly payments, he said no, because he was not required. He was told he would still get credit for rehabilitating the loan over the next nine months, but did not have to make the \$5 payments. He provided a letter from DOE from June 1, 2021, stating that his defaulted student loans were rehabilitated and had been transferred from the DOE Default Resolution Group, which services defaulted federal student loans to a new loan servicer. He also provided a document to show he submitted a request for an automatic monthly payment of \$140 to be made for his DOE student loans, which was to start on January 20, 2022. Applicant testified that when this loan comes out of forbearance his monthly payment will be based on his income. He did not know yet what the amount will be. (Tr. 31-36, 41-47; 78-79, 82, 87-89; Answer to the SOR; GE 1; AE A, B, D, G)

Applicant provided information that his XYZ student loans were now held by a different creditor. He acknowledged and the document notes there are eight loans that were incurred from 2003 to 2006 and totaled approximately \$19,693. In September 2020, he requested they be consolidated. The program did not require him to make any good-faith payments. The consolidation was approved in October 2020, which took the loans out of default status and they are in good standing. His monthly payment is \$131. The loans are in forbearance under the CARES Act. The document states that during the forbearance, payment may still be made and one can opt-out of it and resume a repayment plan. I asked if he had made the monthly payments, and he said no because he is not required to do so in accordance with the CARES Act during the forbearance. Applicant testified that he made a payment of \$2,500 on January 11, 2022, even though he was not required to do so. (Tr. 31-36, 41-42, 56, 72-82; Answer to the SOR; AE B, F)

Applicant testified that the documents he provided show his student loans were consolidated or rehabilitated and were in good standing before the date of the SOR and therefore the SOR is inaccurate because the student loan were not in default and do not remain delinquent. (Tr. 31-34, 73; AE A, B)

Applicant testified that he has reestablished payment plans for his student loans and there were plenty of times he made payments on the accounts and had periods when they were not in default. He noted from 2006 to 2012, he made payments, but there were also periods the loans were in default. (Tr. 111-116)

The SOR alleges two medical collection debts (¶¶1.m-\$355 and 1.n-\$36) that became delinquent in 2015. Applicant testified that he was unaware of these debts until he obtained a copy of his credit report in October 2019. He disputed the charges with his insurance company and also on his credit report. He provided documents to show he paid the debts in October 2020. These debts are resolved. (Tr. 35, 54-56; Answer to the SOR; GE 5, 6)

Applicant and his wife purchased a home in March 2021 for \$820,000. Due to Applicant's credit rating, the mortgage is in his wife's name, because they could get a better interest rate, but the deed is in both of their names. Their monthly mortgage payment is approximately \$2,500. They made a cash down payment of approximately \$155,000. Applicant testified that his share of the down payment was about \$75,000. They own a condo where they previously lived and now rent. The rent covers the mortgage, but not beyond that. They did not sell it due to the market. He has approximately \$60,000 in a 401(k) pension plan and his wife has about \$100,000. He and his wife have about \$50,000 in personal savings accounts. They purchased a new vehicle in 2020 for \$40,000. He took a loan from his pension to pay for it and then repaid the loan. (Tr. 26-30, 102-104)

Applicant traveled for pleasure in 2014 to the Dominican Republic (1-5 days), in 2017 to the Bahamas (6-10 days), in 2018 to Italy (6-10 days), and in 2019 to the Bahamas (6-10 days). He also took skiing trips for three to four days to Aspen, Colorado (2020) and Steamboat Springs, Colorado (2021). He testified that he paid his airfare for his skiing trips to Colorado, but the rooms were complimentary. (Tr. 106-110; GE 1)

Applicant testified that he is a patriot and has supported defense department programs since 2009, and would not do anything to jeopardize his country. He said he paid other priorities, such as paying his employees. He admitted he should have taken action on the student loans and been consistent. He said he did make payments on his student loans over the years and they were not always in default, but did not have a record of them. His finances have never been as good as they are now, and he does not see any reason why he would default on the student loans again. He intends to pay them back based on the income-based repayment plan. He has made no other recent payment other than the \$2,500 made in January 2022. He intends to pay his monthly loan payments. (Tr. 110-111; 115-116)

Applicant provided character letters from a manager and coworker. He is described as dedicated, hardworking, innovative, knowledgeable, and proud. He has an admirable work ethic and a high level of accountability. He exercises good judgment and has high moral standards. (Answer to the SOR)

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent student loans that he obtained beginning in 2003 totaling approximately \$59,456 that at various times over the past 19 years have been in default. He has prioritized other personal and business interests over his responsibility for paying his student loans. He had two medical debts that had been delinquent since 2015. 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 disclosed his delinquent student loans in his 2009 SCA and that he had been unable to repay them. He said he made large lump sum payments over the years. He was referring to the IRS's involuntary withholding of his income tax refunds. He disclosed in his SCA that he made payment arrangements and was in the process of paying the full loan back. He attributed his financial problems to underemployment, but said he was now in a financial position to repay the loans. He did not provide evidence of his repayment plan from 2009 or payments he made when his loans were not deferred.

Applicant's student loans were deferred at various time in the last 19 years while he attended college classes. He is not required to make loan payments when they are deferred while attending school. He also obtained additional student loans in 2012 to 2014. His student loans were in and out of default status over the years.

In September 2019, as part of his security clearance reinvestigation, Applicant again disclosed his delinquent student loans and said he was unable to pay them because he was starting a business. He also said he was working on consolidating the loans and would begin a repayment plan. He anticipated the financial issue being resolved in September 2019. He said he was providing his tax refunds to his student loan debt. He was referring to the involuntary capture of his tax refunds by the IRS.

In October 2019, continuing his background reinvestigation, Applicant told the government investigator that he was aware of his delinquent student loans and was in the process of consolidating them. Eleven months later, in September 2020, he applied for the loans to be rehabilitated and consolidated, which were approved, and his loans are in good standing after completing this process. He also acknowledged that because of the CARES Act, he did not have to make any payments to complete the rehabilitation program. Although his loans are reflected to be in good standing, Applicant has not yet made consistent monthly payments in accordance with the repayment plan. He may legitimately rely on the CARES Act forbearance. However, he has not yet established a

reliable financial track record showing consistent payments over a significant period of time. In the past, Applicant has promised to repay his student loans and said he was in a payment plan, yet his loans became delinquent.

Applicant relies on the documents from the student loan creditors that the loans are in good standing and are no longer in default and therefor the security clearance financial considerations should be resolved in his favor. Although President Biden extended a pause on the collection of student loans due to COVID-19, thus creating a deferment period on student-loan payments, that action does not excuse previously delinquent student loans. (See ISCR Case No. 20-01527)

An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Applicant stands on the fact that the SOR is dated October 7, 2020, and his application for rehabilitation and consolidation was in September 2020, prior to the issuance of the SOR. His argument is disingenuous. Applicant fails to recognize the gravity and longevity of his failure to address his delinquent student loans and that he was on notice about them when he completed his 2009 and 2019 SCA, and when he was interviewed by a government investigator in October 2019. He indicated in his 2019 SCA his intent to resolve the student loan issue by September 2019 and during his interview he said he would address it by December 2019. The fact he had the loans consolidated and rehabilitated days before the SOR does not constitute a good-faith effort to resolve his debts.

Applicant has promised before to address delinquent students loan, but failed to do so. The fact he decided to start a business and use his financial resources to fund that business was a choice. Applicant provided a copy of his 2018 IRS 1040 tax return showing he earned approximately \$31,000. He did not provide other years' income statements. He also disclosed that he took three pleasure trips from 2017 to 2019. He chose to purchase a house in 2021 and was able to put \$75,000 in cash towards the down payment. Repaying his student loans has repeatedly taken a backseat to his other financial choices. The Appeal Board has held that intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his student loans over the years. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find the above mitigating conditions do not apply. I find that the security concerns arising out of Applicant's student loans are not mitigated.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has not demonstrated a reliable financial track record in addressing his student loans, and he has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.l:	Against Applicant

Subparagraphs 1.m-1.n: For Applicant
Subparagraphs 1.o-1.t: Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge