



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



In the matter of:)
)
) ISCR Case No. 20-00906
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: Jerald Washington, Esq.

03/31/2022

Decision

CURRY, Marc, E., Administrative Judge:

Applicant mitigated the foreign influence concerns, but failed to mitigate the financial considerations and personal conduct security concerns. Clearance eligibility is denied.

History of the Case

On February 5, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations, Guideline E, personal conduct, and Guideline B, foreign influence. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On February 15, 2021, he answered the SOR, admitting the allegations in Paragraphs 1 and 3, and neither admitting, nor denying the allegations in Paragraph 2. He requested a hearing, and on August 30, 2021, the case was assigned to me. On December 2, 2021, a video-teleconference hearing was scheduled for December 14, 2021.

At the hearing, I received three Government exhibits, marked and incorporated into the record as Government Exhibit (GE) 1 to GE 3. I also marked and incorporated one Applicant exhibit (AE A) into the record, and took administrative notice of the facts set forth in four documents concerning Nigeria, that I incorporated into the record as Hearing Exhibit (HE) I to HE IV. At the end of the hearing, I left the record open to January 8, 2022 at Applicant's request, to allow him to submit additional exhibits. On January 7, 2022, Applicant submitted five additional exhibits that I incorporated into the record as AE B through AE F. The transcript was received on December 22, 2021.

Findings of Fact

Applicant is a 44-year-old married man with three children. He graduated from high school and has earned some college credits. He works as a security guard. (Tr. 16)

Applicant's wife is a naturalized U.S. citizen who immigrated here from Nigeria in 1998. (Tr. 15) (GE 1 at 46) Applicant's mother-in-law lives in the United States. Within the past year, she became a naturalized U.S. citizen. Applicant's father-in-law lives in Nigeria. He is a retired pilot. Applicant talks to him approximately once every three to four weeks. Their conversations typically last between two and three minutes, and are limited to exchanging pleasantries. (Tr. 27) Approximately every other year between 2013 and 2018, Applicant traveled to Nigeria. (GE 1 at 41-46)

Nigeria is a federal republic composed of 36 states and the Federal Capital Territory. (HE I) Violent crime, such as armed robbery, assault, carjacking, kidnapping, banditry and rape is common throughout the country, frequently targeting dual citizens who have returned to Nigeria, and U.S. citizens with perceived wealth. (HE II at 2) Terrorism is rampant in northeastern Nigeria. (HE IV at 2) The Nigerian government works with the United States and other international partners to fight terrorism. (HE IV at 3)

Per the SOR, Applicant has approximately \$49,000 of debt. Applicant began falling behind on his debts in 2018 when he was unemployed for three months. Subparagraph 1.a is a delinquent car note. The balance of the account is approximately \$27,000, and Applicant, as of the date of the SOR, was one month behind on the monthly payments of \$730. (Answer at 1) SOR subparagraph 1.b is a credit card account totaling \$16,148. Applicant began using this credit card to make cash advances when he was unemployed. The debt in subparagraphs 1.a and 1.b is held by the same creditor.

Applicant is no longer behind on the delinquent car note alleged in subparagraph 1.a and it is not in default. (Answer at 5) Subparagraph 1.b remains delinquent. On December 16, 2021, Applicant reached an agreement with the creditor. Under the agreement, he is to

resolve the debt in \$200 monthly payments, beginning December 30, 2021. (AE F) Applicant's counsel submitted the AE F on January 7, 2022, but did not provide proof that the first payment was made on December 30, 2021, as required per the agreement.

SOR subparagraph 1.c, totaling \$2,740, is a delinquent tuition payment. Applicant was unaware of this debt. Specifically, after registering for a class with the university, he dropped it and did not think he would owe the tuition for the entire semester. (Tr. 20) After the hearing, Applicant arranged a payment plan. Under the plan he was make \$100 payments, beginning December 20, 2021. (AE E) He submitted AE E on January 7, 2022, but provided no proof that he had made the first payment. Applicant had earlier promised to make payment arrangements with this creditor, in response to interrogatories of June 2020. Applicant noted that he was going to contact the creditor. (GE 2 at 5)

SOR subparagraph 1.d, totaling \$1,503, is a delinquent loan that Applicant used to purchase furniture. (Tr. 20) He has been attempting to contact the creditor, but has thus far been unsuccessful. (Tr. 20) It remains unresolved.

SOR subparagraph 1.e totals \$1,032. After the hearing, Applicant contacted the creditor and negotiated an agreement to satisfy the debt in the reduced amount of \$671, payable by February 14, 2022. (Tr. 23; AE C)

SOR subparagraph 1.f, totaling \$502, is an allegedly delinquent phone bill. Applicant disputes this bill. (Tr. 24) He provided no evidence substantiating the basis of the dispute.

SOR subparagraph 1.g, totaling \$81, is a delinquent satellite television bill. Before the beginning of the investigative process, Applicant was unaware of this debt. (Answer at 2) Applicant satisfied this bill in December 2021. (AE D)

Applicant earns an annual salary ranging from \$56,000 to \$65,000, depending on how much overtime he works. (Tr. 16) He and his wife have approximately \$4,000 deposited in a joint checking account. (Tr. 40) Applicant testified that he maintains a budget. (Tr. 22) He has approximately \$1,000 of monthly discretionary income after bills are paid. (Tr. 22) He did not provide a copy of his budget. In December 2020, Applicant retained a credit repair agency to help him with his finances. (AE A; Tr. 42) He did not elaborate about the services they have provided since he hired them.

Applicant completed a security clearance application (SCA) in June 2018. Subparagraph 2.a alleges that he falsified his SCA by failing to list his delinquent debts in response to Section 26, which reads as follows:

Other than previously listed, have any of the following happened? In the past seven years, you had bills or debts turned over to a collection agency? In the past seven years, you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?

Applicant had been making car payments on the debt alleged in subparagraph 1.a, but was running one month behind. Subparagraph 1.b had been charged off when Applicant completed the SCA. Applicant was unaware that he owed the debts listed in SOR subparagraph 1.c and 1.g. He denied SOR subparagraph 1.f. Although the debts listed in subparagraphs 1.d through 1.f were delinquent when Applicant completed the security clearance application, there is no record evidence that they had been turned over to collection, or charged off, and the record evidence is unclear as to whether they were more than 180 days overdue when Applicant completed the SCA. (GE 3 at 2-4)

Applicant contends that he did not include the debts alleged in subparagraphs 1.a and 1.b because he electronically submitted an earlier SCA without double checking the responses. (Tr. 47) Applicant had an opportunity to correct these discrepancies in 2018 when an investigative agent interviewed him and asked him whether he had ever been more than 180 days late on debt payment in the past seven years. (Answer at 2) Applicant failed to do so until confronted.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are articulated 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. . . .

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) 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.

Applicant’s incurrence of delinquent debts triggers the application of AG ¶¶ 19(a), “inability to satisfy debts,” and 19(c), a history of not meeting financial obligations.” The following mitigating conditions are potentially applicable under AG ¶ 20:

(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,

(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 financial problems began after a three-month period of unemployment in 2018. Since then, he has caught up on the car payment, alleged in subparagraph 1.a and he has paid the delinquent satellite television bill, alleged in subparagraph 1.g. I resolve these subparagraphs in his favor.

In addition to satisfying or getting current on the debts, as discussed in the previous paragraph, Applicant has retained a credit repair agency to help him manage his finances, and he has negotiated payment plans with the creditors of the debts set forth in subparagraphs 1.b and 1.c, and negotiated a settlement for the debt alleged subparagraph 1.e. Conversely, he did not make any plans to resolve these debts until approximately ten months after the issuance of the SOR and one week after the hearing. Under these circumstances, 20(a) does not apply. Moreover, payments were supposed to begin on subparagraphs 1.b and 1.c by the end of December 2022. Applicant submitted the agreements in January 2022, but provided no evidence that he made the first payments, as set forth in the settlement agreements. Under these circumstances, the cause of Applicant's debts relates to an event beyond his control, but he did not establish that he acted responsibly under the circumstances. Only the first prong of AG ¶ 20(b) applies.

Given that Applicant did not provide proof that he initiated the payment plans for the debts set forth in subparagraphs 1.b and 1.c, any presumption that he paid the debt alleged in subparagraph 1.e in February 2022, as promised, is speculative. Furthermore, he failed to elaborate upon, or document the services that the credit repair agency has been providing to him. Consequently, the hiring of credit repair agency triggers the first prong of AG ¶ 20(c), but the second prong with respect to there being clear indications that the problem is being resolved or under control is inapplicable.

As for AG ¶ 20(d), Applicant initiated a good-faith payment plan to satisfy his delinquent debt; however, he provided no evidence that he made the first scheduled payments under the arranged payment plans. Consequently, I cannot conclude that he is adhering to the plans. AG ¶ 20(d) is only partially applicable.

Applicant disputed the debt alleged in subparagraph 1.f, but did not provide any evidence substantiating the basis of his contention. AG ¶ 20(e) does not apply.

In conclusion, Applicant deserves credit for getting caught up on his car payment, alleged in subparagraph 1.a. He has taken additional steps such as retaining a credit repair agency and negotiating settlements with creditors. However, he provided no proof that he made the first payments under the settlement agreements, and the basis of dispute for one of the SOR debts is unsubstantiated. Under these circumstances, he has not met his burden of proving that the debts are under control or that they will be resolved, as promised. Applicant has failed to mitigate the financial considerations security concern.

Guideline E: Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” (AG ¶ 15) Moreover, “of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” (*Id.*)

Applicant’s failure to disclose delinquent debts in response to Section 26 of his 2018 SCA raises the question of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities,” applies. It is unclear from the record whether Applicant was behind on his car note (subparagraph 1.a) when he completed his SCA. Consequently, I cannot conclude that he falsified the SCA when he did not include it in response to Section 26.

Applicant believed in good faith that he did not owe any money for the semester when he withdrew from college. Under these circumstances, he did not falsify his SCA when he did not include the delinquent loan alleged in subparagraph 1.c. Although the debts listed in subparagraphs 1.d through 1.f were delinquent when Applicant completed the security clearance application, there is no record evidence that they had been turned over to collection, or charged off, and the record evidence is unclear as to whether they were more than 180 days overdue when Applicant completed the SCA.

Applicant’s explanation for not disclosing the debts alleged in subparagraph 1.b is more problematic. Assuming for the sake of argument that his explanation that it was a

careless oversight that stemmed from turning in a previously-completed SCA without updating it, he had an opportunity to correct the oversight when he met with an investigative agent a few months later, and did not disclose it until confronted. Under these circumstances, AG ¶ 16(a) applies to Applicant's omission of the delinquent car note, as alleged in subparagraph 1.b, and his later failure to disclose it to an agent triggers the unmitigated application of AG ¶ 16(b), "deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative." In sum, I conclude that Applicant failed to mitigate the personal conduct security concerns.

Guideline B: Foreign Influence

Under this guideline, "foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance." (AG ¶ 6) Applicant's mother-in-law no longer lives in Nigeria and is a naturalized U.S. citizen. Consequently, Applicant's relationship with her does not generate a foreign influence security concern. I resolve subparagraph 1.a in Applicant's favor.

Conversely, Applicant's father-in-law remains a Nigerian citizen and resident. Given Nigeria's troubled history of terrorism, Applicant's contact with his father-in-law could create "a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion." (AG ¶ 7(a))

Applicant's conversations with his father-in-law are typically two to three minutes in length, once every three to four weeks, and are limited to exchanging pleasantries. Under these circumstances, the mitigating condition set forth in AG ¶ 8(c), "contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation," applies. Applicant has mitigated the foreign influence security concern.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

- (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.

Given the length of time that elapsed before Applicant began attempting to resolve his debts, and his intentional omission of relevant financial information during the investigative process, I conclude that Applicant did not carry the burden of establishing that he is not a security risk.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a – 2.b:	Against Applicant
Paragraph 3, Guideline B:	FOR APPLICANT
Subparagraphs 3.a - 3.b:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge