



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



In the matter of:)	
)	
)	ISCR Case No. 20-02383
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant has either satisfied his debts entirely, or been paying them through payment plans. Currently, none are in delinquent status. Clearance is granted.

Statement of the Case

On January 11, 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. 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 her. 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.

Applicant answered the SOR on March 16, 2021, admitting all of the allegations except subparagraphs 1.e and 1.i. He requested a decision on the written record instead of a hearing. On June 24, 2021, the Government submitted a File of Relevant Material (FORM) consisting of a statement of the Government's position and five documents pre-marked as Items 1 through 5. On July 6, 2021, DOHA forwarded a copy of the FORM to Applicant and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on July 13, 2021. On August 16, 2021, Applicant submitted a response to the FORM. He included five attachments which I have identified as Items 6 through 10. The Government did not object, and on October 6, 2021, the case was assigned to me.

Findings of Fact

Applicant is a 60-year-old, single man. In 2015, he earned an associate degree in engineering. (Item 2 at 12) Since 2015, he has worked for a defense contractor as an electrician. (Item 2 at 15)

In 2013, Applicant matriculated to college to earn an associate degree. He opened six student-loan accounts, as set forth in subparagraphs 1.b through 1.d, and 1.f through 1.h to finance the education. (Item 1 at 3) By the time Applicant graduated in 2015, he had incurred approximately \$40,000 of student-loan debt. (Item 1 at 3) In early 2019, Applicant missed a loan payment. (Item 1 at 3) The lender then contacted Applicant, offering to arrange a weekly, wage garnishment. Applicant accepted the offer. Between April 2019 and February 2021, he made payments ranging from \$148 and \$250. (Item 8) In March 2021, Applicant opted to end the garnishment payments and entered the federal government's loan rehabilitation program. Under this plan, his wages are no longer garnished and he now pays \$561 per month. (Item 7) He has been paying without interruption since he entered this plan. (Item 7 at 1-3) The balance of these student-loan debts alleged in subparagraphs 1.(b) through 1.d, and 1.f through 1.h totals approximately \$26,000, and the debts are no longer in delinquent status. (Item 8 at 2)

Subparagraph 1.a, totaling \$14,263 is a debt owed to a department store. In May 2020, Applicant contacted the creditor and negotiated an agreement whereupon he agreed to satisfy it through 11 monthly payments of \$406 in full and final settlement. (Item 6 at 2) He satisfied this account in August 2021. (Item 6 at 2)

Subparagraph 1.e, totals \$1,712. Applicant satisfied this debt in February 2021. (Item 1 at 6) Applicant satisfied subparagraph 1.i, totaling \$453 in August 2021. (Item 10)

Applicant has no other commercial debt, other than his student-loan debts. He owns his home free and clear of any mortgages, and has no automobile-loan debt. (Item 1 at 4)

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

Under 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.”

Applicant's delinquent debt triggers the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant did not raise any issues with circumstances beyond his control contributing to his delinquencies. Consequently, the mitigating condition set forth in AG ¶ 20(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," does not apply.

Approximately three years ago, Applicant began contacting his creditors and negotiating payment plans. He has been successfully executing the payment plans, as he has satisfied all of his non-student-loan debt entirely, and has been making payments on his student loans since April 2019. The student loans are no longer in delinquent status. Under these circumstances, the following mitigating conditions are applicable:

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;

AG ¶ 20(c): there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

In sum, I conclude that Applicant has mitigated the financial considerations security concerns.

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

The length of time that Applicant has been satisfying his student loans, together with the absence of any other delinquent debt makes it unlikely that Applicant's financial problems will recur. Under these circumstances, the security concerns have been mitigated.

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.i:

For Applicant

Conclusion

In light of all of the circumstances, it is 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 granted.

Marc E. Curry
Administrative Judge