



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



In the matter of:)
)
) ISCR Case No. 21-01004
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

05/09/2022

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 June 11, 2021, the Defense Counterintelligence and Security Agency 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; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 30, 2021, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on November 9, 2021. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 6. (Item 1 is the SOR). Applicant submitted a response to the FORM. He objected to Item 4 on the grounds of authentication. The objection is sustained. Items 2, 3, 5, and 6 are admitted into evidence. Applicant's documents are marked as Applicant Exhibits A through H and are admitted without objection. The case was assigned to me on March 2, 2022.

Findings of Fact

Applicant initially denied all of the SOR allegations. In his FORM response, he amended his answer and admitted the allegations in SOR ¶¶ 1.a through 1.h, and partially admitted and denied ¶ 1.k. He denied SOR ¶¶ 1.i and 1.j. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. He is not married and has no children. He served in the Army Reserve from May 2010 until March 2018 and was honorably discharged. He lists his periods of employment from April 2014 to September 2014; October 2014 to May 2015; June 2015 to October 2016; and January 2017 to December 2019. He was unemployed from October 2016 to January 2017. He has been employed by a federal contractor since December 2019. (Items 2, 3)

Applicant attended college at three different institutions from January 2009 to May 2010; January 2013 to December 2013; and April 2017 to December 2017, and earned a technical certificate. He funded his education with student loans from the Department of Education (DOE). These loans are alleged in SOR ¶¶ 1.a through 1.h and total approximately \$22,395. Applicant disclosed on his January 2020 security clearance application (SCA) that the loans had been delinquent since approximately 2016. (Items 2, 3, 5, 6)

In Applicant's response to the FORM, he stated that his student loans were deferred due to the COVID-19 pandemic. He stated that he began a rehabilitation program with DOE in 2021 and is making payments of \$150 a month. He intends to continue making payments until the loans are resolved. He provided a copy of a repayment agreement dated June 21, 2021, showing the balance owed on his defaulted student loans was \$22,136. It also showed his first payment was due January 2022. A document reflecting his account payments shows a payment of \$132 made in November 2021 and another payment of \$150 made in January 2022. A letter from DOE reflects that he made six consecutive payments, which makes him eligible for DOE Title IV aid. He did not provide evidence of when the payments were made and the amounts. (AE A, B, C)

Applicant disclosed in his January 2020 security clearance application (SCA) that he failed to pay his 2017 federal income tax due to financial and personal hardship. He estimated he owed about \$2,800. He also disclosed that he failed to file his 2018 federal income tax return due to financial hardship. He estimated he owed \$3,000. His failure to file was not alleged in the SOR. Regarding both his 2017 and 2018 tax issues, he stated that he was working with a tax professional to resolve them and should have them taken

care of within the month. He stated: "At a minimum, we are aiming towards a payment plan for anything owed." (Item 3) In his answer to the SOR, he indicated he could not confirm that he had a balance owed to the IRS. He amended this answer in his FORM response explaining he understands he owes back taxes. He stated he has filed all of his tax returns and begun making payments on the balance owed. He confirmed his tax debt for tax year 2017 is \$5,269 and 2018 is \$6,375. He said he is making payments of at least \$300 a month, but will make payments of up to \$500 a month when feasible. There is no evidence of an installment agreement with the IRS. Applicant provided a document reflecting a payment of \$500 was made to the IRS in November 2021 and another one of \$300 was made in January 2022. (AE F, G)

The debt alleged in SOR ¶ 1.i (\$5,761) is for a collection account for an apartment that Applicant rented with two roommates and they broke the lease in 2016. One roommate reneged leaving Applicant and his other roommate to pay the entire rent, which they could not afford. Despite attempts to rectify the situation, including speaking with the property manager, they were unable to pay the rent and were evicted. In Applicant's January 2020 SCA, he indicated he was working with the collection agency to settle the debt. He provided a letter from August 2020 showing he resolved the debt. (AE E, G)

SOR ¶ 1.j (\$749) is a collection account from 2016. It was due to an overpayment to Applicant by the Government. Applicant stated that he resolved the debt in either 2019 or 2020, but the creditor would not verify the date the debt was paid. He provided a document verifying the debt is resolved. (AE D, G)

Applicant attributes his financial difficulties to a period between 2015 and 2017. He indicated that in 2015 he was earning minimum wage, and he was evicted from his apartment. He was living in his friend's car for eight months. The car was repossessed so he had to live in a motel. He decided to move to seek new opportunities and while driving cross country with his friend, the police stopped them. His stated his friend had a marijuana vape pen and marijuana grinder in the car, and they were arrested. He paid a lawyer to resolve the charge, which took over a year. He was unemployed from October 2016 to January 2017. (Item 2; AE G)

Applicant began living with his father in approximately October 2016 and in January 2017 he began a new job and was earning \$15.50 an hour. In January 2020, he began a new job and his annual salary was \$68,000. In October 2021, he changed jobs and his annual salary was \$72,000. He recently moved to another job and he stated he was making more money than he has ever before. He did not say the amount. Applicant provided a copy of his budget, which reflects payments to the IRS and DOE for his student loans. It also reflects he has \$202 remaining in expendable income at the end of the month. (AE F, G, H)

Applicant disclosed in his January 2020 SCA that he traveled to the Dominican Republic in August 2018 for six to ten days for tourism. Applicant's disclosures in his SCA, admissions in his answer to the SOR and FORM response, along with credit reports from March 2020 and February 2021 corroborate the SOR allegations. (Items 2, 3, 5, 6; AE G)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant had student loans totaling more than \$22,000 that were delinquent from about 2016. He failed to timely pay his federal income taxes for tax years 2017 and 2018. He also had two accounts that were in collection. 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;
- (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
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant attributed his financial difficulties to underemployment and unemployment from 2015 to 2017 and from having difficulties after a roommate reneged on his portion of their rent. These were conditions beyond Applicant's control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant became employed in January 2017, but did not provide an explanation for why he failed to contact DOE until approximately 2021 to address his delinquent student loans. Although the CARES Act has placed student loans in deferment, it does not negate the years of inattention toward addressing his student loans. Applicant could have contacted DOE and requested a deferment due to his unemployment and underemployment or requested an income-based payment plan. There is no evidence that he did. Applicant failed to pay his federal income taxes for tax years 2017 and 2018. He did not provide an explanation for why he failed to pay his taxes, other than he was having financial and personal hardships. He was obviously earning income during this period, but he did not elaborate on why he did not contact the IRS and establish a payment plan to pay his taxes. He indicated in his January 2020 SCA that he had a tax professional and intended to implement a payment plan within a month. He did not provide evidence that he has a payment plan with the IRS. He provided evidence of two payments made towards his delinquent federal taxes. He also disclosed that in 2018, he traveled to the Dominican Republic for six to ten days for tourism. Applicant has not

provided sufficient evidence to conclude he acted responsibly. AG ¶ 20(b) has minimal application.

Applicant resolved the collection accounts alleged in SOR ¶¶ 1.i and 1.j in approximately 2019 and 2021 respectively. AG ¶ 20(d) applies to those debts. DOE noted that Applicant had made six consecutive payments on his delinquent student loans, presumably sometime in 2021. The amount is unknown. He also made two subsequent payments. Although, AG ¶ 20(d) applies to his student loans in that he is now making payments on them, it is insufficient to fully mitigate the security concerns for his failure to address the delinquent loans in a timely manner. He was employed in 2017, but there is no evidence he attempted to address the delinquent student loans until 2020 or 2021. He did not provide the date of his first payment. Applicant failed to provide a reasonable explanation for why he did not address his tax debt for several years. He has not established a consistent payment record regarding his taxes. He did not provide evidence that he has an installment agreement with the IRS. AG ¶¶ 20(d) and 20(g) do not apply.

Applicant's tax debt is ongoing and recent. His failure to timely pay his 2017 and 2018 federal income taxes casts doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

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.

I have considered that Applicant went through a difficult financial period and was underemployed and unemployed. He began steady employment in January 2017 and

was responsible for paying his federal income taxes, regardless of how much he earned. He failed to do so for two tax years and has a significant tax debt. No evidence was presented that he has a payment plan with the IRS. Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, 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).

Although Applicant may have been unable to make payments on his student loans, he did not contact DOE for years after the loans were in a default status. At this juncture, Applicant has failed to establish a reliable financial track record and it is too early to conclude that he will continue to make consistent payment on his student loans and delinquent taxes. Applicant failed to meet 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 all these reasons, I conclude Applicant failed to mitigate the security concerns raised 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.h:	Against Applicant
Subparagraphs 1.i-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
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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