



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



In the matter of:)
)
) ISCR Case No. 21-01234
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/11/2022

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 17, 2017. On June 25, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD issued the SOR under Executive Order 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 23, 2021. He provided one document, and elected to have his case decided by an administrative judge of the Defense Office of

Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. On November 2021, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 9. Applicant received the FORM on December 6, 2021. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, and on March 31, 2022, the case was forwarded to the DOHA hearing office for assignment to an administrative judge for a decision on the written record. The case was assigned to me on May 4, 2022. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 9 are admitted into evidence without objection. The document Applicant attached to his answer is marked as Applicant's Exhibit (AE) A and admitted without objection.

Findings of Fact

In his answer to the SOR, Applicant admitted each allegation (SOR ¶¶ 1.a through 1.g) each with brief comments. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He graduated from high school in 2003 and from college in 2007. He earned a Ph.D. in 2014. He then spent two years as a post-doctoral researcher. He has worked for his current employer, a defense contractor, since May 2016. He previously worked for the same company in 2007 and 2008. He and his wife have been married since 2015; they have no children. (Item 2)

On his SCA, Applicant disclosed that he had delinquent student loans, both federal and private. (Item 2 at 34-37). Applicant discussed these and other debts in his January 2019 background interview. (Item 3) In December 2020, he responded to interrogatories from DOHA about his finances. He provided a personal financial statement, an October 2020 paystub, and a May 2020 agreement with the U.S. Department of Education to rehabilitate his delinquent federal student loans (with a balance of about \$43,000) by paying \$1,025 per month. (Item 4)

The SOR debts are established by Applicant's admissions and by the credit reports in the record, from September 2017, July 2019, April 2020, February 2021, and November 2021. (Items 5-9) The SOR debts total \$36,477 in federal student loans, \$14,470 in debts to a bank, and a \$936 tax lien. They are detailed as follows:

SOR ¶¶ 1.a (\$16,927), 1.b (\$10,589), 1.d (\$5,922), and 1.f (\$3,039) are all federal student loans to the U.S. Department of Education. With his answer to the SOR, Applicant provided a copy of the same rehabilitation agreement he submitted with his Interrogatory Response. According to that agreement, signed in May 2020, Applicant had four delinquent federal student loans, on which he owed about \$43,000. He was to pay \$1,025 per month. (AE A; Item 4 at 10)

Applicant explained some of his debts in his January 2019 background interview. For some of his federal loans (originating between 2000 and 2007), he explained that he requested forbearance in 2008 but did not clarify to the lenders that he was in graduate school. As a result, he began receiving payment notices. For a time, he was on a repayment plan, but stopped making payments after he consulted legal counsel. Instead, he fell behind. (Item 3)

Applicant's federal student loans are likely in forbearance under the Coronavirus Air, Relief, and Economic Security (CARES) Act of 2020. President Biden recently extended this forbearance period through August 2022. It allows for a suspension of loan payments, a zero percent interest rate, and collections on student loans are halted. (See <https://studentaid.gov/announcements-events/covid-19>). He provided no documentation of any payments made on his federal student loans, either before he entered into the rehabilitation plan, or since, and he does not set forth a plan to address his federal student loans when the CARES Act forbearance period ends.

SOR ¶¶ 1.c (\$8,736) and 1.e (\$5,734) are debts to a bank. Applicant indicated in his background interview that he believes the accounts are private student loans that he may have co-signed for his wife, but he was unsure of any details. (Item 3 at 5) His credit reports list the accounts as being deferred, in collection, and most recently, charged off. (Items 5, 6, 7, 8, 9) In his Answer, Applicant admitted the debts and suggested, without corroborating evidence, that they were under the same rehabilitation agreement as the federal student loans. These debts are unresolved.

SOR ¶ 1.g (\$956) is an unresolved state tax lien entered against Applicant in 2009. (Item 5 at 2) It is not listed on subsequent credit reports. The tax lien was issued by State 1, where Applicant earned his Ph.D., between 2007 and 2014. (He now lives and works in another state, State 2). In his background interview, he indicates that he erroneously claimed State 1 as his residence one year and was therefore assessed tax on his income. (Item 3 at 4) In his answer, he said that, while he admitted the debt, it is "in adjudication" and that his "income" was actually an educational stipend. (Item 1) He provides no documentation to support either the fact of the dispute or the validity of his assertion. However, the tax lien appears to be an isolated circumstance.

With his interrogatory response, Applicant provided an October 2020 pay stub from his employer. At that time, he earned \$56.39 per hour and worked full time. With a 40-hour work week, he would earn \$2,255.60 per week, and \$117,291.20 per year (52 weeks). (Item 5) It is presumed that he earns a similar income now, a year and a half later, working for the same employer, his clearance sponsor, though this is not documented.

With his answer, Applicant provided no documentation about any efforts to pay or resolve any of his debts, either through the debt relief program or otherwise. He provided no updated information about his current financial stability. He also did not respond to the FORM, so the only information about his financial situation is taken from prior information.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(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 access to classified information 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. Under Directive ¶ E3.1.15, 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has significant past-due federal student loan debts, private debts, and an unresolved state tax lien. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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;
- (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.

Most of Applicant's debts are federal student loans. They are likely in forbearance under the CARES Act. However, the record shows that they became delinquent long before the COVID-19 pandemic began in 2020. Applicant entered into a rehabilitation plan in May 2020, but provided no documentation of any efforts to address his federal student loans either before then or afterwards, nor has he set forth a plan or intention to do so. He asserts, incorrectly and without support, that his two delinquent private loans (which may be student loans or something else) are covered by the rehabilitation plan. Those debts remain charged-off and unresolved. Even Applicant's 2009 tax lien, likely an explainable and isolated circumstance, is unresolved, and he provided no updated

documentation to address its status. Applicant has a Ph.D. and seems to make a good living. It appears he has the means to address his student loans and other debts in a responsible way. But he did not provide documentary evidence of payments towards his debts, or efforts to resolve them. Accordingly, he did not provide sufficient evidence that any mitigating conditions should 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(a), 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. Applicant did not provide sufficient evidence to mitigate the security concern shown by his history of delinquent debts. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. For these reasons, I conclude Applicant did not provide sufficient information to mitigate the security concerns about his finances under Guideline F.

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.g:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge