



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



In the matter of:)
)
) ISCR Case No. 21-02860
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

07/14/2022

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. Eligibility for access to classified information is denied.

Statement of the Case

On January 13, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on March 3, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on March 29, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 26, 2022. As of June 3, 2022, he had not responded. The case was assigned to me on June 16, 2022. The Government exhibits included in the FORM, marked as Items 1-5, are admitted in evidence without objection. Applicant provided two character

reference letters with this response to the SOR. Those letters are considered part of the record in this case.

Findings of Fact

Applicant is a 48-year-old employee of a government contractor for whom he has worked since October 2020. Prior to working with his current employer, he worked with another government contractor from June 2014 until October 2020. He served on active duty in the U.S. Air Force from 1996 until 2006. He also served in the Air National Guard from 2006 until 2014. He was awarded an honorable discharge at the end of both terms of service. For several years, he took undergraduate courses, but has not earned a bachelor's degree. He has been married since 1996, has two adult children, and a 17-year-old child. (Items 3, 5)

The SOR alleges Applicant owes 20 delinquent debts totaling about \$85,000 (SOR ¶¶ 1.a-1.t). The SOR allegations are established through the 2021 credit report, his 2021 background interview, and his admissions in his response to the SOR. (Items 1-5)

SOR ¶¶ 1.a-1.q are Federal student loans that comprise the vast majority of the aforementioned delinquent amounts. These Federal student loans are unresolved. Applicant admitted these SOR allegations, but claimed that in June 2021, he contacted the Department of Education to set up an income-based repayment plan and the debts will be in "good standing" in nine months. Applicant claimed that he became delinquent on his Federal student loans in February 2020. He stated that he was assisting his daughter financially while she was attending college, had used all of his available forbearance and deferment extensions, and could not afford his student loan payments. He did not provide specifics about how much money he provided his daughter, the length of time that he was financially supporting her, or whether he continues to support her. He provided no evidence to show that he can now afford to pay his delinquent student loan debts or that he will be able to do so in the future. Moreover, Applicant provided no documentation to support his assertion that he has attempted to resolve or otherwise rehabilitate these debts. While neither party has provided evidence to this effect, I have taken administrative notice that all federal student loans were eligible for placement in a deferment status as of late March 2020 at the earliest. Therefore, available evidence shows that Applicant was delinquent on these debts prior to any placement in a deferment status. (Items 1-5)

SOR ¶¶ 1.r-1.t are medical debts totaling approximately \$700. These debts are unresolved. While Applicant acknowledged these debts as being for his children's medical services in his 2021 security interview, he denied these medical debts in his response to the SOR. He claimed that he contacted the collection agency and the original creditor, but they could not locate his accounts. He also claimed that he asked for documents related to these medical debts from the collection agency, but that he had not yet received any. Applicant did not provide any documentation establishing when he contacted creditors, or that the debts were disputed, paid, or otherwise

resolved. He also claimed that he became delinquent on the three medical debts listed in the SOR because he did not receive a bill for these medical services. (Items 1-5)

Applicant did not respond to the FORM, so more recent information about his finances is not available. Applicant is an active member of his church and has been entrusted with reviewing and maintaining financial and other personal information there. He provided character reference letters from his supervisor at work and a religious official of his church attesting to his integrity, honesty, trustworthiness, and strong work ethic. (Item 2)

Policies

This case is adjudicated 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), which became effective within DOD on June 8, 2017.

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 to be 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, 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(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."

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 the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

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; and

- (c) a history of not meeting financial obligations.

All of Applicant’s delinquent debts remain unpaid or unresolved. He has a history of unpaid debts. I find the above disqualifying conditions are raised.

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 (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments/>), that action does not excuse previously delinquent student loans. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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
- (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.

The SOR debts are ongoing and therefore recent. Applicant acknowledged his student loan delinquencies, but failed to provide documentary evidence that he has taken action to remedy those delinquencies, such as a completed application to rehabilitate his Federal student loans, or proof of payments. He also failed to provide documentary evidence to support his claims that he has paid, disputed, or otherwise resolved the three medical debts in the SOR. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016).

Applicant stated that he intends to bring his student loan debts current and resolve his medical debts. However, 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).

As Applicant provided no evidence as to why he had to support his daughter financially, for how long, or the amount of money he spent, I am unable to find that his student loan delinquencies were beyond his control or that he acted responsibly under the circumstances if they were. Given his lack of documentation of his efforts to resolve his debts or the timing of these efforts, I cannot determine whether he made a good-faith effort to pay or otherwise resolve his debts. Finally, without evidence as to

Applicant's ability to repay his Federal student loans if and when they are rehabilitated, I cannot conclude that the problem is being resolved, is under control, or is unlikely to recur. The financial considerations security concern is 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 relevant 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 Applicant's honorable and lengthy military service as well as his positive character references.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concern.

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.t:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge