



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



In the matter of:)
)
) ISCR Case No. 21-01284
)
Applicant for Security Clearance)

Appearances

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

08/12/2022

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 20, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 effective June 8, 2017 (AG).

Applicant answered (Answer) the SOR on July 29, 2021, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 15, 2022, and the hearing was convened as scheduled on April 27, 2022. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government’s exhibit list was identified as hearing exhibit (HE) I and the Government’s discovery letter was identified

as HE II. Applicant testified but he did not offer any exhibits at his hearing. The record remained open until May 20, 2022, to allow Applicant to submit documentary evidence. He submitted AE A (1-25), B (1-2), and C (1-2), which were admitted without objection. DOHA received the hearing transcript (Tr.) on May 5, 2022.

Findings of Fact

Applicant denied the SOR allegations. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 47-year-old employee of a federal contractor performing the duties of a chief systems engineer. He began working at his present job in November 2016. He earned his bachelor's degree in 2008 (attending from 2004-2008), his master's degree in 2010 (attending from 2008-2010), and his doctorate (Ph.D.) in 2016 (attending from 2011 to 2016). He used student loans to finance all of his higher education. The loans were serviced by both the Department of Education (DOE) and a private loan servicing corporation (PL). He is divorced. He has seven children, including two former stepchildren and reported that he provides financial assistance to the younger two children. He served in the Air National Guard from 2009 to 2017 when he was honorably discharged. (Tr. 6, 21-22, 24-26, 40; GE 1, 3)

The SOR alleged eight delinquent DOE student loans totaling approximately \$98,042. The debts are established by a credit report from September 2020 and Applicant's personal subject interview (PSI) with a background investigator in November-December 2020, including documents provided by Applicant to the investigator after his interview. (SOR ¶¶ 1.a – 1.h) (GE 2-3)

Applicant's student loan history is somewhat confusing. The SOR only alleged that his DOE loans were in collection status and therefore delinquent. A November 30, 2020 letter from a loan servicing company corroborates that the same eight DOE student loans listed in the SOR were the loans Applicant sought to rehabilitate. An August 9, 2021 letter to Applicant from DOE indicated that the same eight student loans were successfully rehabilitated. As for the student loans serviced by the PL, correspondence to the Applicant from the PL indicated that 11 student loans (with different loan numbers and amounts due versus his DOE loans) were placed into a "forbearance" status for nonpayment on November 25, 2020. (Since these delinquent student loans were not alleged in the SOR, I will not consider them for disqualification purposes, but I may consider them in determining the applicability of any mitigating conditions and in making assessments using the whole-person factors.) (GE 2, see attached thereto documents labeled "Attachment 1, Item 003, Page 3, 4, 8, 9 of 9"; Answer to SOR attachment thereto).

Applicant testified that his undergraduate student loans were deferred during his military service. During his background interview, he stated that he never made any payments toward his PL student loans before or after his military service. While Applicant was trying to work with the PL servicer, COVID hit and subsequently through Presidential action, all federal student-loan payments were automatically deferred. Applicant believes

that the PL student loans have been consolidated with the DOE student loans. Applicant's most recent credit report (April 2022) still shows the PL student loans as separate from the DOE loans, however, the status listed for each of the PL loans indicates "Pays account as agreed" as of March 2022. (Tr. at 22-23; GE 2 (PSI p. 3))

During his testimony, Applicant claimed that earlier in April 2022 he made his first payment of \$289, under what he believed was the total consolidation of all his student loans, including both from DOE and the PL. I asked Applicant to provide documentation of this payment and documentation showing the latest payment agreement he had concerning his student loans. Applicant responded with a post-hearing email dated May 20, 2022. (See AE A1-A25) Listed in Applicant's email as an item attached thereto was a document he called "Proof of payment toward Student Loan." However, the supporting documentation does not show the April student-loan payment of \$289 he referenced in his hearing testimony. Moreover, none of the documents comprising AE A1- A25 show any agreements toward paying his student loans, or any actual payments toward his student loans. What the documentation shows is that Applicant entered an agreement with a commercial service to submit requests on his behalf seeking student loan consolidation or requests for repayment plans. The agreement called for Applicant to make monthly payments of \$248 from April 2022 through September 2022, followed by monthly payments of \$39 from October 2022 to March 2023. These payments are called "document preparation services and fees" of this company and do not go toward any student-loan payments. (AE A8) One of the documents (AE A15) is a request for additional forbearance and a request to stop making payments because of "financial difficulties." None of these documents, or any other documentation in the record, show payments toward Applicant's DOE or PI student loans. The documents show that his total student-loan debt is greater than \$160,000. (AE A 24) (AE A1-A25)

Applicant provided spreadsheets for April and May 2022, listing his monthly expenses for each month. It is not a budget because it does not track his income against his expenses. Both months show expenses of \$248, which he labels as "school loan," but which is for the payment of the document preparation services for the commercial service. There are no other entries for student-loan payments. The spreadsheet also shows Applicant is making minimal monthly payments on 12 credit cards. The combined balance on those cards is approximately \$34,000. An earlier budget from November 2020 that Applicant submitted during his background interview, shows that he was operating at a monthly deficit after paying all his expenses for the month. (GE 2, see attached thereto documents labeled "Attachment 1, Item 002, Page 1 of 5"; AE B1-B2)

Applicant provided letters from two coworkers in support of Applicant seeking a leadership position in a local civic organization. They described Applicant as honest, forthcoming, dependable, and responsible. (AE C1-C2)

Policies

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 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(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, 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 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 an 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred multiple student loans beginning in approximately 2004, of which none have been paid. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

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

Although President Biden extended a pause on the collection of federal student loans due to COVID-19, thus creating a deferment period on federal student-loan payments (<https://www.whitehouse.gov/briefing-room/statements->

[releases/2021/01/20/pausing-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))

Applicant's debts are recent because they are ongoing. While Applicant should be commended for his pursuit of higher education, he did so funding his education with student loans, which he has failed to pay back. Over an 18-year period, there is little to no evidence reflecting that he met his payment obligations on those loans. His lack of affirmative action to address his student loans casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant did not describe any conditions beyond his control as contributing to not allowing him to pay his student loans. Even if his child-support payments fell into that category, he did not act responsibly when he took no action to address his student loans over an 18-year period. AG ¶ 20(b) is not fully applicable.

Applicant did not present evidence of financial counseling. His track record to date does not support a good financial picture. Additionally, he failed to put forth a good-faith effort to resolve his student loans. Perhaps someday, student loans such as Applicant incurred will be forgiven, but that day is not today. Applicant's financial problems are not under control. AG ¶¶ 20(c) and AG 20(d) do 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's contractor experience, his honorable military service, and his efforts to support his children. However, I also considered that he has made insufficient efforts to resolve his student loans. He has not established a meaningful track record of debt management, which causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Robert E. Coacher
Administrative Judge