



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



In the matter of:)
)
) ISCR Case No. 21-00011
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

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 August 10, 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 on June 8, 2017.

Applicant answered the SOR on August 16, 2021, and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 24, 2022, scheduling the hearing for April 7, 2022, by Microsoft Teams. The hearing was held

as scheduled. The Government offered exhibits (GE) 1 through 8. Applicant testified and did not offer any documentary evidence. There were no objections to the exhibits and they were admitted into evidence. The record remained open until April 21, 2022, to permit the Government and Applicant to provide additional evidence. The Government offered GE 9 and 10. Applicant offered Applicant Exhibits (AE) A through D. There were no objections and all were admitted into evidence and the record closed. DOHA received the hearing transcript on April 18, 2022.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.c and denied the allegations in ¶¶ 1.a, 1.b and 1.d. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He has taken some college courses, but does not have a degree. He served in the Army from 1987 until he retired in 2017 in the rank of E-6. He was married from 1990 to 1993 and has no children from the marriage. He remarried in 1999, and he has three grown stepchildren ages 35, 33, and 30. After his military retirement, Applicant obtained a job with a federal contractor and has been employed steadily. His wife worked in the past, but is no longer employed. (Tr. 15-20)

In 2004, while deployed to Iraq, Applicant was wounded and was diagnosed with a traumatic brain injury (TBI). He testified that his injury has impacted his memory. (AE B).

Applicant cosigned for his stepdaughter's student loans in approximately 2006. He testified that they agreed she was to repay the student loans. It is unknown why she could not obtain the loans on her own. She attended college and earned an associate's degree in four years. Applicant testified he deployed in 2007, 2012, and 2014, and did not think about the student loans. He was focused on the mission. He stated the student loans were out of his mind for a long time. (Tr. 23-31, 49-51)

In January 2013, Applicant was interviewed by a government investigator as part of his background check for his security clearance. When questioned about the student loans, Applicant told the investigator that his wife did not tell him about the delinquent loans while he was deployed or that his stepdaughter had defaulted on the loans. He said he was in the process of paying for them. (GE 3)

Applicant was notified that his security clearance was an issue due to his finances. He was confronted with some delinquent debts and the student loans that are alleged and consolidated in SOR ¶ 1.c (\$84,031) as security concerns. It appears his security clearance was revoked, and he sent a letter to the DOD Consolidated Adjudications Facility (CAF) dated August 22, 2013, with a subject line: Request for Reconsideration-Revocation of Security Clearance. In the letter he states "My daughter was supposed to be paying the student loans and when she defaulted, I was responsible for them." (GE 9). As part of his request he provided information that he was participating in a debt

consolidation program and had enrolled most of his delinquent debts in the program. The student loans were not part of that program. Instead he provided a copy of bank statements to show transfers were made in May, June, July, and August 2013 for payments on the student loans. His command recommended that his security clearance be reinstated. (Tr. 62-69; GE 9; AE C)

In November 2013, Applicant received a letter from the DOD CAF advising him that he received a “conditional” security clearance determination. It stated:

We have thoroughly reviewed your response to reference 1.a and have made a favorable determination based on your statement, favorable recommendation, and proof of actions you have taken to resolve your delinquent debts. You have been granted a Secret security clearance. You are hereby notified **that failure to resolve your delinquent debts or other subsequent unfavorable information may result in the suspension of your security clearance.** (GE 10)

Applicant’s command was directed to monitor his efforts to resolve his delinquent debts every three months for one year, and Applicant was to provide documentation of his efforts to pay his delinquent debts and student loans. (GE 10)

Applicant testified that when he returned from deployment in 2016 (his 2014 deployment extended into 2016), he realized he was on the “hook” for the student loans, and he would have to pay them. He said he thought his stepdaughter was paying the student loans. He had other debts he was addressing first and then was going to address the student loans. (Tr. 23-31, 53)

In June 2020, Applicant was interviewed by a government investigator. He disclosed to the investigator that he had cosigned the student loans for his stepdaughter and was unaware until about 2019, when he went to obtain a mortgage, that she was not making payments, and he would be responsible for paying this debt. He told the investigator he did not disclose the delinquent student loans on his security clearance application (SCA) because he was trying to get his stepdaughter to pay them. He said he thought she was paying the student loans when he completed the SCA. He stated that after he learned she was not, he realized he had to take an active role to fix his finances.¹ (Tr. 21, 53-61; GE 2)

Applicant spoke to his stepdaughter in the summer of 2021 about her paying the student loans and she told him she could not pay them and had no interest in paying them. He said he contacted the Department of Education in January 2022, and applied for the loans to be forgiven. He believed he may have been eligible to have the student

¹ Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

loans forgiven due to his disability. DOE responded in March 2022 to his request and advised him he must be permanently and totally disabled in order for his student loans to be discharged. He was given more information where he could seek further information or clarification. DOE also advised him that under the Cares Act the interest on student loans was not accruing. Applicant has not provided evidence that he is eligible to have his student loans discharged. He did not provide any additional evidence of payment arrangements he or his stepdaughter may have made or more recent efforts to resolve the student loan debt. (AE A, D)

The SOR (¶ 1.a-\$1,590) alleges a collection account from January 2020 for an apartment. Applicant was required to move for his job. He failed to give the required notice, incurred the debt, and it became delinquent. He testified he paid it in August 2021. His August 2022 credit report reflects it was paid. (Tr. 33-38; GE 8)

The debt in SOR ¶ 1.b (\$173) is a collection account to an auto parts store for a check that was returned due to nonsufficient funds. Applicant testified he contacted the store to pay the debt and it was unaware of the account. Due to the age of the account, it is likely the store no longer holds the debt. Applicant is unable to resolve it. (Tr. 47-48)

The allegation in SOR ¶ 1.d (\$433) is a state tax lien that was filed in October 2019. The lien was released in August 2020. (Tr. 39-44; GE 7)

The debts alleged in the SOR are corroborated by Applicant's admission, a state tax report, and credit reports from December 2012, April 2020, October 2020, May 2021, and March 2022. (GE 2-8)

Applicant testified that when he was in the Army he was totally focused on the mission and training soldiers. He was not educated about finances while in the Army. He realized when he retired that his finances needed to be addressed, and he needed to improve his credit score. He testified that he is now aware of the issues and will take action and make payments. Applicant attributed some of his failure to address the student loans to his memory issues. (Tr. 20-21, 31, 33, 72)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant is responsible for approximately \$84,000 of delinquent student loans that were obtained in approximately 2006. He has been aware of his obligation since at least 2013 and has taken minimal action to resolve this debt. He also had some other accounts that were delinquent. 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; and

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

Applicant resolved the delinquent accounts in SOR ¶¶ 1.a, 1.b and 1.d. AG ¶ 20(d) applies to them. He has not resolved the largest debt owed for the delinquent student loans. He cosigned the student loans for his stepdaughter. He has been aware of their delinquency since at least 2013 and his responsibility to pay them. He was put on notice during his security clearance adjudication in 2013 that they were a security concern and he made a few payments. Although he says he believed his stepdaughter was repaying the loans, he provided no evidence that payments were made by her or that he followed up on ensuring such payments were being made. He testified that he was again made aware they were not being paid in 2019. He failed to take action on them at that time or after he was interviewed by a government investigator in 2020. He provided a letter from the DOE from March 2022 regarding his request to have the loans forgiven. He did not provide evidence that he qualified for forgiveness of the loans or that he has arranged a payment plan.

Applicant's student loans have not been paid and are recent. There is insufficient evidence that his financial problems were beyond his control. He has not provided evidence he has participated in financial counseling or that there are clear indications the problem is being resolved. There is no evidence that he has initiated and is adhering to a good-faith effort to repay his student loans and minimal evidence that he is resolving the debt. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) do not apply to the student loans.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I have considered that Applicant is a veteran who was injured in combat. Although, perhaps some of the delay in addressing the student loans could be attributed to memory issues, he has been on notice several times over the last ten years that these student loans were a security concern. He has also been aware that his stepdaughter does not intend to pay them and he is responsible to do so. At this juncture, he has failed to provide evidence that he is making arrangements to pay the student loans or has a plan for resolving them. He has not met 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 these reasons, I conclude Applicant failed to mitigate the security concerns arising 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.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

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