



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



In the matter of:)	
)	
)	ISCR Case No. 22-00004
)	
Applicant for Security Clearance)	

Appearances

For Government: Dan O’ Reilly, Esq., Department Counsel
For Applicant: *Pro se*

10/07/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant has not mitigated the security concerns under the financial considerations guideline. He did not provide documentation to meet his burden of proof. Eligibility for access to classified information is denied.

Statement of the Case

On February 15, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Adjudicative Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017. Applicant responded to the SOR 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) on April 11, 2022. Applicant received the FORM on May 24, 2022. He did not provide a response to the FORM. The Government’s evidence, included in the FORM

and identified as Items 1 through 7, is admitted without objection. The case was assigned to me on September 6, 2022. Based on my review of the documentary evidence, I find that Applicant has not mitigated financial considerations security concerns.

Findings of Fact

In response to the SOR, Applicant admitted SOR allegations ¶¶ 1.a through 1.f with explanations. (Item 2) He is 31 years old, and is married with no children. From November 2010 to March 2013, Applicant attended college, but he did not obtain a degree. Since November 2019, he has been employed with his current employer. Applicant has not served in the military. He completed a security clearance application on December 5, 2020. Applicant has never held a security clearance. (Item 3)

Financial Considerations

The SOR alleges that Applicant has six delinquent student loan accounts in the approximate amount of \$25,619 (Item 2) The allegations are supported by his admissions and credit reports. (Items 6, and 7)

In his answer to the SOR, Applicant stated that he was not able to afford any payments and therefore the student loans became delinquent, defaulted and moved to collections. He attributes his non-payment of the student loans due to unemployment (2010-2013) or seasonal jobs that did not pay well. (Item 2) In his response to DOHA financial interrogatories, dated April 22, 2021, none of the student loan accounts were paid, in payment plans, and no payments were being made. Applicant reported that he had delinquencies involving the student loans but did not receive any information after the loans went to collections. (Item 5)

In his personal subject interview in March 2021, Applicant listed unemployment from December 2018 to March 2019 and from April 2019 to November 2019. His spouse supported him during this time of unemployment. Applicant told the investigator that he has no other financial issues. He has not obtained services from a credit counseling service. He claimed that he was not delinquent on any federal debt or defaulted on any other loans. (Item 4)

Applicant stated that with his current job, he is able to start paying the debts. In a letter dated February, 18, 2022, from the U.S. Department of Education, he was notified that he could rehabilitate his defaulted student loans with a monthly repayment amount of \$354, which was based on his income. He accepted the agreement to repay beginning in April 2022. Applicant signed the agreement on February 25, 2022. (Item 2) Applicant did not provide any information or documentation that he has started the payment plan.

Applicant's monthly net salary combined with his spouse's salary is \$6,743.92. After monthly expenses of \$2,392, his net remainder is \$4,023.56. In his submitted budget he listed a car loan with a scheduled payment of \$328.36. (Item 5)

As to SOR 1.a, a collection account in the amount of \$6,436; 1.b, a collection account in the amount of \$5,282; 1.c, a collection account in the amount of \$4,337; 1.d, a collection account in the amount of \$3,318; 1.e, a collection account in the amount of \$3,187; 1.f, a collection account in the amount of \$3,059 all to the Department of Education, none have been resolved.

Applicant did not provide any documentation for the record to demonstrate that he is taking steps to resolve his delinquent debts. He intends to pay his debts, but promises to pay in the future are not sufficient for mitigation. He is now earning a salary, but his student loans have been delinquent since 2014, and it is not clear from the record if a single payment has been made. He claimed that the IRS took his tax refund, and applied it to his student loans, but he did not provide any proof. Absent any proof of payments, Applicant did not meet his burden of proof.

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 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(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."

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant's admissions, corroborated by his credit reports, establish disqualifying conditions under the guidelines: AG ¶¶ 19(a) “inability to satisfy debts”), and 19(c) “a history of not meeting financial obligations

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admitted that he is responsible for his student loans and intends to pay them. However, he did not present any evidence to support that he has acted responsibly and in good-faith to repay his financial obligations, or has a meaningful track record of repayments. Based on the lack of evidence from Applicant, it is difficult to conclude that he has the requisite judgement, reliability, or trustworthiness needed to have access to classified information. He has not met his burden and none of the mitigating conditions apply. Any doubts must be resolved in favor of the Government.

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. Applicant is married and has had periods of unemployment, but he has been consistently employed since 2019. He agreed to a rehabilitation program, but he did not provide any documentation concerning resolution

of his delinquent debt. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. He has not met his burden of proof.

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.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge