



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



In the matter of:)
)
 -----) ISCR Case No. 21-01896
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/14/2022

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided evidence sufficient to mitigate the national security concern arising from his problematic financial history and personal conduct. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on September 24, 2019. The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on December 3, 2021, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. The DCSA CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 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 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On June 8, 2022, Applicant submitted an answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of

Hearings and Appeals (DOHA) in lieu of a hearing. On July 5, 2022, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA sent the FORM to Applicant on the same day, and he received it on July 27, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. The SOR and the Answer (Items 1S and 1A, respectively) are the pleadings in the case. Items 2 through 6 are admitted without objection. The case was assigned to me on October 3, 2022.

On November 8, 2022, I emailed Department Counsel and Applicant that I intended to take administrative notice of the following August 16, 2022 press release by the U.S. Department of Education: Education Department Approves \$3.9 Billion Group Discharge for 208,000 Borrowers Who Attended [Applicant's college or "the College"]. <https://www.ed.gov/news/press-releases/education-department-approves-39-billion-group-discharge-208000-borrowers-who-attended-itt-technical-institute>. The parties had until close of business November 15, 2022, to object. There were no objections. This press release is marked as Hearing Exhibit (HE) 1 and is admitted.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 34 years old, has never married, and has no children. He attended college from March 2011 to March 2013, when he earned his Associate's degree. He earned his Master's degree from the same college in March 2015. He was unemployed from March 2004 until August 2014. He also listed "In process with [a company]" during that period. Neither his SCA nor his Personal Subject Interview (PSI) explained what that meant. Since September 2016, he has worked for a defense contractor. (Items 2 and 3.)

The SOR alleged 13 student loans that are in collections totaling \$77,113. (Item 1S.) Applicant admitted all allegations. (Item 1A.) The creditors for all 13 loans are "DEPT OF ED/NE," "DP OF EDUC," or "US DEPARTMENT OF EDU," respectively. (Items 4, 5, and 6.) The amounts past due in the eldest credit report (Item 4, January 29, 2020) do not match any of the amounts due in the two most recent credit reports. (Items 5 (February 22, 2021) and 6 (June 22, 2022)). Nor do the account numbers in the eldest report match the numbers in the two most recent reports. (Items 4, 5, and 6.) Therefore, the eldest report (Item 4) is given less weight.

The SOR dollar amounts and account numbers for each debt came from the February 22, 2021 credit report. (Item 5.) Those dollar amounts match the latest credit report dollar amounts. (Item 6.) The debts were incurred in approximately the 2013 to 2015 timeframe. (Items 5 and 6.) Because the 13 debts have the same creditor, the same respective amounts due, and the same reporting status, they do not warrant separate discussions.

HE 1 states in pertinent part the following:

Today the U.S. Department of Education (Department) announced that it will discharge all remaining federal student loans that borrowers received to attend the College from January 1, 2005 through its closure in September 2016. . . .These borrowers will have the federal loans they received to attend the College discharged without any additional action on their part. . . . [The investigation showed that] The College engaged in widespread and pervasive misrepresentations related to the ability of students get a job or transfer credits. . . . The College defrauded hundreds of thousands of students. . . .

Applicant received his Associate's degree in March 2013 and his Master's degree in March 2015. Therefore, he attended the College during the dates covered by the Department's loan discharge.

The SOR also alleged that Applicant deliberately failed to disclose his delinquent student loans in his SCA. The SCA did not, in fact, disclose those loans. (Item 2.) Applicant admitted that allegation. (Item 1A.) The subject of his student loans and his failure to disclose them were discussed in his PSI:

Subject was advised during his initial contact to schedule his interview, to bring any documentation pertaining to his financial accounts. Subject was asked if he was currently delinquent or had any accounts that were currently collections or charged off. Subject disclosed that he had looked at his student loans yesterday and that they were in defaulted [*sic*] and he knew they were delinquent. Subject knew he had to pay them but after graduation he tried to start payments but he was not able to contact the creditor. Shortly after Subject graduated [the college] was closed and Subject was given points of contact that would not return his calls. After three months of repeated attempts to contact the creditor Subject gave up trying to pay. Subject is financially responsible and he is willing and able to make the payments, he became frustrated trying to locate the creditor. Subject did not list the accounts on the questionnaire because he did not have all the information for the accounts, he did not intentionally omit the information. (Item 3.)

During Applicant's PSI, he went into detail about his monthly income, normal expenses, and monthly remainder. His monthly remainder at that time was \$2,013. (Item 3.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court 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).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Guideline F, Financial Considerations

The security concern relating to Guideline F 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.

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).

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

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

The SOR debts are established by Applicant's admissions and the Government's credit reports. AG ¶¶ 19(a) and 19(c) apply.

Guideline F 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; and
- (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.

The next inquiry is whether any mitigating conditions apply.

Applicant's SOR debts were incurred in the 2013 and 2015 timeframe. That is not so long ago. Nor were those debts infrequent. And they remained in default to the present. Because of the frequency and recency of the debts, AG ¶ 20(a) does not mitigate his debts.

Addressing Applicant's student loans apparently came to the fore after he earned his Master's degree in the spring of 2015. He knew after graduation that he needed to start paying his loans. And he was willing and able to make payments, as attested by his monthly net remainder. He was given points of contact for the creditor. He contacted those contact points for about three months, but he never received any return calls. He became frustrated trying to locate the creditor. Shortly after he graduated in 2015, his school closed. The closure of Applicant's school and his resultant inability to find his creditor to pay for his loans are "conditions. . . largely beyond" his control, within the contemplation of AG ¶ 20(b). That, however, does not end the inquiry.

AG ¶ 20(b) also requires that Applicant act "responsibly" under the adverse circumstances he confronted. In this case, he knew that after graduation he would need to start paying off his student loans. He obtained contact information for his creditors. For several months, he used that contact information trying to reach his creditors, but to no

avail. Not long after, his school closed and was the subject of a federal investigation. That resulted in hundreds of thousands of student loans being discharged, including Applicant's loans. AG ¶ 20(b) applies and mitigates his debts.

Guideline E - Personal Conduct

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). Under Guideline E for personal conduct, the concern is that "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." A statement is false or dishonest when it is made deliberately (knowingly and willfully).

In this case, the SOR alleged that Applicant falsified facts by failing to disclose his delinquent student loans in his SCA. He unqualifiedly admitted that allegation. This conduct falls squarely within AG ¶ 16(a), which states in pertinent part:

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations.

AG ¶ 17(a) states in pertinent part a condition that may mitigate that disqualifying condition:

[The] individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

In this case, after falsifying by omission his SCA, Applicant's next opportunity to correct that omission was during the PSI. At the outset of the PSI, he was asked the open-ended question whether he was currently delinquent, had any accounts that were currently in collections, or charged off. He "disclosed that he had looked at his student loans yesterday and that they were in defaulted [*sic*] and he knew they were delinquent. [He] knew he had to pay them but after graduation." His answer was straightforward, not the product of coaching, or confrontation. He concluded this exchange as follows: "[He] did not list the accounts on the questionnaire because he did not have all the information for the accounts, he did not intentionally omit the information."

On this record, Applicant used the first opportunity afforded by the security clearance process to rectify his omissions in the SCA. He did so without having seen the SOR or being confronted by the investigator. I find that Applicant mitigated his omission under AG ¶ 17(a).

The Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence 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:	FOR APPLICANT
Subparagraphs 1.a. – 1.m.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge