



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 20-00079

Appearances

For Government:
Aubrey De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

December 7, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on April 25, 2018. (Government Exhibit 1.) On June 11, 2021, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on August 3, 2021, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 15, 2021. I was assigned the case on April 12, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 18, 2022. The case was heard on May 31, 2022. DOHA received the transcript of the hearing on June 9, 2022.

The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibit A, which was also admitted without objection. He asked that the record remain open for the receipt of additional documentation. Applicant timely submitted Applicant Exhibits B and C, which were admitted without objection. (Applicant Exhibits B and C are split into three subparts identified by initials. Citations will be to the exhibit and subpart, if necessary.) The record closed on July 8, 2022.

Findings of Fact

Applicant is 60 years old and married with three children. He has a Master's degree. Applicant is employed by a defense contractor as a Program Manager and is seeking to retain a security clearance in relation to his employment. (Government Exhibit 1 at Sections 12, 13A, 17, and 25.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR alleged that Applicant had five past-due student loan debts totaling approximately \$227,311 (SOR 1.a through 1.e). Applicant admitted all the allegations in the SOR with explanations. Support for the existence and amounts of these debts is found in credit reports dated November 25, 2019; and May 23, 2022. (Government Exhibits 3 and 4.)

Applicant stated that he took these loans out to provide a college education to his oldest child. She graduated in 2016. Repayment of the student loans was to begin in 2017. That did not happen. He stated that in 2018 he began to get default notices on these loans. He believed they were in error due to his daughter being on a mission for her church and ignored them. Applicant did not begin to make payments until 2018. He made one payment of \$600 in 2018 and 4 payments of \$600 in 2019. The last payment in 2019 appears to have been in May. (Applicant Exhibit B at 1, MG-8 through MG-14; Tr. 17, 19-20, 25, 31-35.)

When asked why he did not make more payments in a timely fashion before the summer of 2019, Applicant stated, "I don't have an answer for that. They weren't paid. If they weren't paid, they weren't paid. But I don't have a particular reason why they weren't paid." Regarding repayment of the student loan debt in general he said, "There wasn't a good reason." He also testified that he always had the financial ability to make monthly payments of \$600. (Tr. 35, 55, 57.)

Applicant stated he did not make payments in 2020 or 2021 due to the student loan payment deferments enacted because of the Covid pandemic. Applicant has not spoken to anyone at the Department of Education (DoE) about his loans since 2021. He admitted his contact with DoE has been sporadic. He submitted emails from the DoE that do discuss suspension of loan payments in 2020 through 2022. (Applicant Exhibit B at MG-5 and MG-7; Applicant Exhibit C at MG-6; Tr. 35-38, 49-52.)

Applicant discussed the fact that he had prepared and submitted a "Loan Rehabilitation and Expense Information" form to DoE in 2019. After the hearing, he submitted a copy of that document. He stated that the form was submitted, but he had no documentation to support a statement that the DoE had accepted the form or arranged for a payment agreement. (Applicant Exhibit C at MG-4; Tr. 37.)

Applicant stated that he had begun making regular payments on this loan in 2022 for the months of January through May. After the hearing he provided documentation from his bank showing that five checks of \$600 each were cashed by the DoE in May 2022. It is noted that the checks have sequential serial numbers, were received for processing the same day, and all cleared his bank on May 31, 2022, the same day as the hearing. He submitted evidence showing that he had made one additional payment. He stated that he will continue to make monthly payments of \$600 on these loans into the future. He admitted that payments on this loan in the past were "sporadic." (Applicant Exhibit B at MG-1, MG-2; Tr. 19, 31-33.)

Applicant testified that he had another student loan go into default and eventually a judgment was entered against him and his paycheck was garnished. However, he was very vague on the particulars of the garnishment until he submitted documentation after the hearing. (Government Exhibit 2 at 4, 7-8; Applicant Exhibit B at SC-4 through SC-6; Tr. 17-18, 26-31.)

Applicant also admitted that he has gone "a couple years" without filing his tax returns several times in the past. An investigator from the Office of Personnel Management interviewed applicant in January 2019. Applicant stated in the interview that he had not filed his 2016 or 2017 tax returns in a timely fashion. (Government Exhibit 2 at 3; Tr. 54-55.)

Applicant testified that he had paid out of pocket for the education of his second child, who has since graduated. He is currently paying for his youngest child and wife to

attend community college. He submitted voluminous documentation after the hearing showing his out-of-pocket costs for their education. (Answer; Applicant Exhibit A; Applicant Exhibit B at SC-1 through SC-8; Applicant Exhibit B at LPC-1 through LPC-3; Tr. 17-20.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (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 owed approximately \$227,000 for five past-due student loans as of the date the SOR was issued. He testified that he had the financial ability to pay these student loans in a timely manner but failed to do so. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

(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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

The evidence of record does not support application of any of the above mitigating conditions. Applicant's attitude towards these substantial debts was lackadaisical at best. He admitted that he had no excuse for his failure to keep up regular payments before Covid. Even accounting for Covid there is no record of consistent payments over a substantial period. He stated that he had the financial ability to keep up the payments; it just was not a priority for him. Rather, his priority was paying out of pocket for the education of his other two children and his wife. While that may be laudable, that is no excuse for neglecting this debt. There has not been a good-faith effort to repay this debt. His conduct does not show that he has acted responsibly in attempting to resolve the debt. Based on the available evidence I cannot say with any degree of certainty that Applicant will not continue to ignore this debt in the future if he believes other expenses are more important. Paragraph 1 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns regarding his financial situation. He has minimized neither the potential for pressure, coercion, or duress, nor the likelihood of recurrence. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.e:

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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge