



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



In the matter of:)
)
) ISCR Case No. 21-01746
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

12/19/2022

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 September 3, 2021, the Department of Defense 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 in September 2021¹ and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2022. The Defense

¹ The date on the answer to the SOR is September 1, 2021, which is before the date of the SOR and obviously incorrect.

Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 1, 2022, scheduling the hearing for November 19, 2022. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 4. Applicant objected to GE 2, the summary of a personal subject interview. The objection was sustained and GE 2 was not admitted into evidence. GE 1, 3, and 4 were admitted into evidence. Applicant testified and offered Applicant Exhibit (AE) A. There was no objection to the exhibit, and it was admitted into evidence. The record remained open until December 13, 2022, to permit Applicant an opportunity to provide additional evidence. He provided documents that were marked AE B and C. There were no objections, they were admitted into evidence, and the record closed. DOHA received the hearing transcript on December 7, 2022.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.m through 1.t. He denied the allegations in SOR ¶¶ 1.a through 1.l. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He is not married and has no children. He earned a bachelor's degree in 2017. He has been employed by a federal contractor since December 2020. His annual salary when he was hired was \$64,000 and his current salary is approximately \$72,000. (Transcript (Tr. 14-16)

The SOR alleges 12 student loans (¶¶ 1.a through 1.l) totaling approximately \$50,734 that are in collection status. Applicant attended college from 2008 to 2017. Two credit reports from 2021 reflect that he obtained loans in 2008, 2009, 2013, and 2016. He took time off from attending school during this period. When he graduated from college in 2017, he was unable to pay his student loans because he was underemployed or unemployed. He had the loans placed in a deferment status twice, but was unable to defer them a third time. He testified that before he graduated, he attended an "exit" class that provided information about the loans. A payment plan was not set up at that time. He testified that about six or seven months after he graduated he contacted the Department of Education (DOE) and asked about consolidating his loans and a repayment plan, but he was unemployed and underemployed at the time and could not afford to make the monthly payments they suggested, which were between \$250 - \$350. (Tr. 15, 26-27, 30-37)

In December 2020, Applicant started a full-time job with a federal contractor. He testified that he did not think about addressing his student loans until he was required to apply for a security clearance. He completed his security clearance application (SCA) in January 2021, and was interviewed by a government investigator in February 2021. In August 2022, Applicant submitted an application to DOE to rehabilitate his student loans. He hopes to come up with an income-based repayment plan. He has not received correspondence from DOE regarding his application. He said he is also hoping to qualify to have some of his student loans forgiven, but understands that program has not yet begun. (Tr. 27-29, 37-39 GE 1; AE A)

Applicant testified that he became energized to pay his student loans after receiving the SOR. He said he heard that under a new government program there was a chance his loans could be forgiven, but the loans had to be in good standing to qualify for a forgiveness program. Based on that information, he applied for the rehabilitation program. He is hopeful that some of his loans may be forgiven, if a government program is approved. He has not made any payments on his student loans since graduating from college. He stated he did not realize failure to address his student loans might be a hindrance to him obtaining a security clearance. He testified that his plan is to not make contributions to his 401k pension plan and Individual Retirement Account and use that money to pay his student loans. He understands he has an obligation to pay the student loans and intends to do so. He stated he was aware that in February 2021 his student loans were deferred due to the pandemic. (Tr. 39-40, 43-50)

SOR ¶ 1.m (\$1,189) alleged a charged-off credit-card account. Applicant admitted he owed this debt and testified that he had failed to pay the debt at the time it was due. He said he had contacted the creditor about the debt. He told the creditor that he could only afford to pay what was originally owed and could not afford the added interest. He testified that with his other expenses, he has not paid the debt because the amount is too much. He said he could afford to pay \$100. In his September 2021 answer to the SOR, he stated, "I am not aware of a [creditor in SOR ¶ 1.m] debt that requires a payment. Currently working on a payment plan to execute and have that debt paid off." (Answer to SOR) He testified that he does have a plan to pay the debt, but has not executed it. His plan is to take money from his health saving account to pay the debt. The debt is reported as charged off on two 2021 credit reports. After his hearing, Applicant provided a settlement agreement with the creditor. He was to make an initial payment on December 12, 2022, of \$100 and a final payment on January 12, 2023 of \$374. He provided a copy of the settlement agreement. He did not provide proof he made the first payment. (Tr. 17-22; AE B)

The debt in SOR ¶ 1.n (\$167) was for unpaid insurance. He provided a receipt that the debt was paid. (Tr. 22-23; Answer to SOR)

The debts in SOR ¶¶ 1.o through 1.t are unpaid utility bills. Applicant explained he and his roommates were renting a house together while in school. The utilities were in Applicant's name. Applicant moved out and his roommates remained, but they did not pay the utilities. When he learned the bills were unpaid, he contacted his former roommates who gave him the money to pay the bills. He stated he would provide proof that the debts were paid. Post-hearing he provided a document to show the debt was resolved in February 2022. (Tr. 22-26; AE C)

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; and
- (c) a history of not meeting financial obligations; and

Applicant has student loans that were in a collection status before the pandemic. During the pandemic, they were put in a deferred status, which will likely expire in the upcoming months. He had a credit card debt that was charged off and other delinquent debts. 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attended college and obtained student loans from 2008 to 2017, totaling approximately \$50,734. These loans were placed in deferred status twice because he was unable to make payments. He was unable to have them deferred a third time. and they went into collection status. He was underemployed and unemployed until December 2020. He said he did not think about repaying his student loans until he realized they may create a hindrance for him obtaining a security clearance for his job. He completed a SCA in January 2021. In August 2022, he submitted an application to rehabilitate his student loans. His application has not been acted upon, and he has not made any payments on his student loans. Applicant also had a delinquent credit card that remained unpaid.

Applicant's debts are recent and ongoing. He did not take meaningful action to address his student loans until he applied for a rehabilitation program in August 2022, about 20 months after he completed his SCA. He has not started a repayment plan and does not have a reliable financial track record of payments. After his hearing, he negotiated a settlement agreement on a credit card that had been charged off. He has not completed the terms of the settlement. At this juncture, I cannot find that future financial issues are unlikely to recur. AG ¶ 20 (a) does not apply.

Applicant's unemployment and underemployment were beyond his control. However, he failed to act responsibly regarding his delinquent student loans until after he applied for a security clearance, and that action has been minimal, as no payments have yet been made. He did not reach a settlement agreement with the credit card creditor until after his hearing concluded. AG ¶ 20(b) has minimal application.

An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

There is evidence that Applicant paid the delinquent utility bills and paid his past-due insurance (SOR ¶¶ 1.n – 1.t). AG ¶ 20(d) applies to these debts. There is no evidence that he has participated in financial counseling. AG ¶ 20(c) does not apply.

Applicant testified that he intends to repay his student loans and resolve his other debts. However, intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). Applicant did not reach a settlement on his credit card debt until after his hearing. He did not provide proof of his first payment.

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.

Applicant does not have a reliable financial track record. At this juncture, it is too early to conclude that his financial issues are no longer a security concern. Applicant 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.m:	Against Applicant
Subparagraphs 1.n-1.t:	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