



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



In the matter of:)	
)	
)	ISCR Case No. 22-00782
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

February 15, 2023

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On May 2, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on May 19, 2022. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On September 20, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and received by him on October 11, 2022. The FORM notified

Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 7, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 7.

Findings of Fact

Applicant is 30 years old, and is not married. He is employed by a defense contractor as a helpdesk supervisor. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR alleged that Applicant has eleven delinquent debts consisting of nine Federal student loans, one medical debt, and a consumer debt, which were placed for collection totaling approximately \$40,584. Credit reports of the Applicant dated August 12, 2021; and April 19, 2022, confirm this indebtedness. (Government Exhibits 7 and 8.) The SOR also alleged that Applicant deliberately failed to disclose this financial indebtedness on his security clearance application dated July 27, 2021. (Government Exhibit 4.) Applicant admits allegations 1.a. through 1.k. regarding his financial indebtedness, and he denies allegation 2.a. concerning falsification. Applicant began working for his current employer in August 2018.

The following delinquent debts are of security concern:

During his interview with a Federal investigator on September 13, 2012, Applicant was confronted with all of the debts alleged in the SOR. (Government Exhibit 5.) His credit reports show nine delinquent debts owed to the Government for student loan accounts that were placed for collection in the approximate amounts of \$4,793; \$6,394; \$3,526; \$3,362; \$2,527; \$6,521; \$3,170; \$5166; and \$4,188 totaling about \$39,647. (See Allegations 1.a., through 1.i of the SOR.) Applicant acknowledged that the accounts were open for his college tuition. He stated that he believed that the accounts were opened in his mother's name. He stated that he did not know that they remained owing until it was brought to his attention during the security clearance process. He further stated that he is actively in the process of resolving these issues. (Government Exhibit 3.) Applicant submitted no documentation to demonstrate that he has done anything to resolve these debts. The debts remain owing.

1.j. A delinquent debt is owed to a creditor for an account that was placed for collection in the approximate amount of \$912. Applicant rented a washer and dryer, and relocated

out of state before the appliances were returned. Applicant seems to believe that the rental company is responsible for the debt. Applicant provided no documentation to demonstrate that the rental company is liable for the debt, or that he has resolved the debt. The debt remains owing.

1.k. A delinquent debt is owed to a creditor for a medical account that was placed for collection in the approximate amount of \$25. Applicant stated that he was not aware of the debt, but that he is in the process of resolving it. The debt remains owing.

Even if Applicant only learned about his delinquent debts during his September 2021 interview with the Federal investigator, he has done nothing since then to resolve his debts.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant completed a security clearance application (e-QIP) dated July 27, 2021. (Government Exhibit 4.) In response to Section 26, Financial Record, Delinquency Involving Routine Accounts: The question asked, “Other than previously listed, have any of the following happened? In the past seven years have you had bills or debts turned over to a collection agency?” Applicant answered, “NO,” and failed to list that he had been delinquent on debts in the past seven years, as noted in Paragraph 1, Guideline F above.

Applicant denied that he deliberately lied on his security clearance application about his delinquent debts. He contends that without his knowledge his parents opened his student loan accounts to pay for his college tuition. He claims that he had no information about the accounts and assumed that his parents had paid them off. His explanation is not reasonable. Applicant knew that the student loans were opened for his college tuition. He knew or should have known that regardless of who promised to pay his student loans, he would be the one legally responsible to pay them back. (Government Exhibit 3.) To assume that his parents opened the accounts using his social security number and without his consent or awareness is preposterous. Their conduct would be criminal. In this case, Applicant deliberately failed to disclose his financial indebtedness on his security clearance application. This shows poor judgment and unreliability. Applicant’s lack of candor, dishonesty and unworthiness finds him ineligible for access to classified information.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 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 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. 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 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 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F - Financial Considerations

The security concern 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable 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 incurred significant delinquent debt that he has not paid. There is insufficient information in the record to conclude whether he is financially stable, or if he can afford his lifestyle, or if he has the financial resources available to handle his financial obligations. There is no evidence in the record to show that any regular monthly payments of any sort are being made toward his debts. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under 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;
- (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.

The record is void of mitigation. Applicant remains delinquently indebted and presented no evidence to show that he has made any effort to resolve his debts. There is no evidence in the record to show that circumstances beyond the Applicant's control contributed to his financial difficulties. What is known is that Applicant has been gainfully employed since 2018, and yet remains excessively indebted. None of the mitigating conditions apply. This guideline is found against the Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

Conduct 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant contends that he knew nothing about his student loan debts until the security clearance investigation. This argument holds no merit. He knew or should have known that student loans opened so that he could pay his college tuition must be paid back. If he did not pay them back and if he did not check to see if his mother paid them back, he has not demonstrated responsibility. Applicant should have addressed his student loans and knew or should have known that they were delinquent. Applicant deliberately concealed his financial delinquencies from the government on his security clearance application. There is no excuse for this dishonesty. Deliberately concealing material information from the Government on a security clearance application raises serious questions about one's credibility and trustworthiness. None of the mitigating conditions are applicable.

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 relevant facts and circumstances surrounding this case. Applicant failed to respond to the FORM, and submitted nothing in mitigation. Accordingly, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

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., through 1.k.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	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.

Darlene Lokey Anderson
Administrative Judge