



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



In the matter of:)	
)	
)	ISCR Case No. 22-01323
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

03/22/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Personal conduct security concerns arising from his alleged failure to disclose delinquencies on his security clearance application are not established. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 24, 2021. (Item 2) On July 20, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The CAF issued the SOR under Executive Order 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 Security Executive Agent Directive (SEAD) 4 *National Security Adjudicative Guidelines* (AG) effective within DOD on June 8, 2017.

Applicant answered the SOR on July 21, 2022, and elected to have his case decided by an administrative judge of the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record, in lieu of a hearing. (Item 1) On September 20, 2022, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA mailed the FORM to Applicant on September 22, 2022, and he received it on September 30, 2022. He was afforded 30 days to file objections and submit material in refutation, extenuation, or mitigation. On an unspecified subsequent date, he submitted a response (FORM Response), which included exhibits about his taxes (Applicant's Exhibits (AE) T-1 through T-8), his student loans (AE A1 through A12), and other debts (AE D1 through D5). I have kept the exhibit numbering system Applicant used in his FORM Response. Department Counsel did not object to the admission of Applicant's exhibits, and Applicant did not object to admission of the Government's exhibits.

The case was assigned to me on December 2, 2022. The SOR and the Answer (combined as Item 1) are the pleadings in this case. Items 2 through 6 are admitted into evidence without objection. Applicant's FORM Response and exhibits are all admitted into evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR ¶¶ 1.a through 1.h, 1.j, and 1.m; and he denied SOR ¶¶ 1.i, 1.k, and 1.l, the financial allegations under Guideline F. He denied ¶¶ SOR 2.a and 2.b, the falsification allegations under Guideline E. He provided narrative statements in answering each allegation. His admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 33 years old. He is not married and he has no children. He graduated from high school in 2008 and attended college from 2008 to 2014, while also working, but has not earned a degree. From mid-2011 to early 2012, he worked at a large bank until he was terminated following a cash balance discrepancy in his teller drawer. From early 2012 until early 2013, he was unemployed while attending school. From March 2013 to September 2014, he worked for a credit union before brief employment with a technology company. He was then unemployed from December 2015 until beginning his current job. He has worked for his employer, a defense contractor, since April 2016. (Items 2, 3)

Guideline F

The SOR debts total about \$52,000. They include about \$30,000 in past-due federal student loans, about \$20,000 in past-due federal income taxes, and about \$2,000 in other past-due debts. The record includes credit bureau reports (CBRs) from June 2022 and November 2021 (Items 5, 6), which, along with Applicant's admissions, establish the delinquent accounts alleged in the SOR.

Applicant did not disclose any delinquent debts on his August 2021 SCA. He discussed his taxes and other debts during his November 2021 background interview (see discussion under Guideline E, below), and he provided updated information in a May 2022 interrogatory response. (Items 2, 3, 4)

The debts are detailed as follows:

SOR ¶¶ 1.a (\$4,774), 1.b (\$4,680), 1.c (\$4,429), 1.d (\$3,915), 1.e (\$3,734), 1.f (\$3,567), 1.g (\$2,736), 1.h (\$1,617), and 1.j (\$587) are Applicant's past-due federal student loans, which, as noted, total about \$30,000 combined.

Applicant explained that he attended college between ages 19 and 24 and needed financial aid in order to do so. To stay qualified for financial aid, he had to keep his grades up, both in college and while later attending community college. He failed to do that, so he attempted to work his way through school. He then successfully pursued an information technology (IT) certification, and has been with his employer, a government contractor, in his field, ever since. However, he did not earn enough to pay expenses and to address his student loan re-payments as well, so he fell behind, and they became delinquent. (Answer, Item 2)

When Applicant contacted the U.S. Department of Education (USDOE) in late July 2022 to ascertain the status of his loans, he was told they were in collection status and he had to file a "Debt Resolution" form to rehabilitate them, pay them in full, or consolidate them. Applicant said he applied to rehabilitate his federal student loans by the end of July 2022. Once approved, he would be required to make 9 or 10 timely consecutive monthly payments to achieve loan rehabilitation. (Answer, Item 2)

Applicant provided relevant documentation with his FORM Response. He was approved for an income-based repayment plan of \$5 per month. As of October 2022, he made two \$5 payments, in August and September 2022. His loans remained in "default" status as of October 2022, when they were transferred to another loan servicer. (AE A1 – AE A6)

On October 15, 2022, Applicant applied for forgiveness of up to \$20,000 of his federal student loans under the Biden-Harris administration's student debt relief plan. (AE A7 – AE A10). That plan was subsequently challenged in federal court, and as of this writing, a decision by the U.S. Supreme Court is pending. Additionally, the repayment of several federal student loans have been in forbearance status due to the COVID-19 pandemic under multiple Presidential Executive Orders since March 2020. Federal student loan payments remain paused until at least June 30, 2023, and perhaps beyond, due to the Supreme Court case. See <https://studentaid.gov/announcements-events/covid-19>.

SOR ¶ 1.i (\$700) is an account placed for collection by a phone company. Applicant asserted in his Answer that the account was paid in full and he later provided corroborating documentation. (Item 1; FORM Response; AE D1) This debt is resolved.

SOR ¶ 1.k (\$1,164) is an account placed for collection by a bank. Applicant denies this debt, and notes that the account was not listed on a July 2022 credit report. That credit report is not in evidence, but the debt is also not listed on a June 2022 credit report (Item 5). It is only listed on an earlier credit report, from November 2021. (Item 6) With his FORM Response, Applicant provides a credit card excerpt showing that his account with the bank, which has a credit limit of \$1,000 and a highest balance of \$1,160, is in good standing. (FORM Response; AE D5)

SOR ¶ 1.l (\$367) is an account placed for collection by a jeweler. (Item 5) Applicant denies the debt and says he has disputed it with the credit bureaus. (Item 2) Documentation he later provided verified his dispute but also the credit bureau's conclusion that the account was valid: "The information you disputed has been verified as accurate." (AE D2, AE D3) This account is established and remains unresolved.

SOR ¶ 1.m (\$20,000) concerns Applicant's past-due federal income taxes for tax year (TY) 2019. Applicant admitted the allegation with an explanation. He did not disclose any federal income tax debt on his August 2021 SCA, but he reported in his November 2021 background interview that, in November 2021, he received a letter from the U.S. Internal Revenue Service (IRS) stating that he owed \$20,000 in federal income taxes from TY 2019. He said he did not list it on his SCA because he had just found out about it. (Item 3 at 5)

Applicant lives in a state on the U.S. east coast. He indicated in his Answer that his 2019 tax returns were prepared by a tax preparer, Ms. M, in a state in the southwestern U.S., with a nationally known tax preparation service. The reason why he retained an out-of-state tax preparer is not provided. He asserted that he had never owed taxes in the past and owing taxes for TY 2019 was out of character. (Answer, Item 2)

With his FORM Response, Applicant provided a series of text messages between himself and Ms. M, apparently from earlier in 2022, in which he repeatedly sought information on the status of his taxes, noting that his clearance was in jeopardy. (FORM Response; AE T-1 to AE T-7) Ms. M provided a letter (undated, though probably from 2022), noting that she is her own tax preparation service (in the southwestern state). She explained that Applicant retained her in mid-January 2022 "to settle any clerical errors that involve [Applicant] and his 2019 federal taxes." She asserted that he first contacted her in November 2021 after he received a letter from the IRS. She asserted that he does not owe any taxes and the error resulted from "the removal of the Earned Income Tax Credit" for 2019 due to verification of his employment. She asserted that she expects the IRS will soon verify that the problem has been corrected and that Applicant will receive a refund instead of owing past-due taxes. (AE T-8) Ms. M provides no documentation about Applicant's 2019 federal taxes, to include any tax return, correspondence, or documentation of her interactions with the IRS to resolve the matter.

Applicant provided a personal financial statement (PFS) with his May 2022 interrogatory response. He reported net monthly income of just under \$3,500 and monthly expenses and debt payments of a combined \$3,525, leaving a small negative remainder. He did not list any payments for his SOR debts on his PFS. (Item 4)

Guideline E

Applicant did not disclose any delinquent debts or past-due federal income taxes on his August 2021 SCA. (Item 2) SOR ¶¶ 2.a and 2.b allege that Applicant deliberately failed to disclose that information, in answer to certain questions about his financial record. Applicant denied the allegations of deliberate falsification. (Item 1)

SOR ¶ 2.a concerns the following two questions on Applicant's August 2021 SCA under:

Section 26 – Financial Record – Delinquency Involving Routine Accounts: Other than previously listed, have any of the following happened?:

In the past seven (7) years, you had bills or debts turned over to a collection agency” [and]

In the past seven (7) years, you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed.

All of the debts Applicant allegedly omitted (SOR ¶¶ 1.a-1.h, 1.j-1.l) are debts that were turned over to a collection agency. (Items 5, 6) None of them involved suspended, charged-off, or cancelled accounts. Thus, as to SOR ¶ 2.a, only the first question above is applicable.

Applicant said he “was aware” that his USDOE student loans “were past due but [says he] wasn't aware that the accounts were in collections.” He recalled applying for repayment and forbearance. He denied intentional falsification, noting his belief that “the security department” had access to that information “because the loans belong to the United States Federal Government.” (Item 1, Answer, SOR ¶ 2.a)

SOR ¶ 2.b concerns Applicant's alleged failure to disclose that he had failed to pay his \$20,000 in federal taxes from TY 2019. (SOR ¶ 1.m) As to SOR ¶ 2.b, Applicant said he was advised by his tax preparer “to not accept fault until it was 100% determined that I actually owe.” (Item 1, Answer, SOR ¶ 2.b)

In his background interview, Applicant voluntarily disclosed the November 2021 letter he received from the IRS and noted that he had only then learned about his \$20,000 tax debt for TY 2019. Applicant then denied any other delinquencies, before being confronted with his federal student loans in collection, along with his other past-due debts. (Item 3 at 5)

Policies

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

The adjudicative 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 access to classified information 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, 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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).

The guideline notes several conditions that could raise financial security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant incurred about \$30,000 in past-due federal student loans and some other delinquencies. The debts in the SOR are established by Applicant's admissions and by credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

In November 2021, Applicant received a letter from the IRS regarding \$20,000 in past-due federal income taxes for TY 2019. The letter is not in the record, but he disclosed the matter in his November 2021 background interview and admitted SOR ¶ 1.m, concerning that debt. That admission and disclosure is sufficient to satisfy AG ¶¶ 19(c) and 19(f) as to SOR ¶ 1.m.

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, or 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's federal student loans remained past due and in default status at the time he responded to the FORM. He has not yet resolved or successfully disputed his \$20,000 federal tax debt from TY 2019. These debts remain ongoing and unresolved. As such, they continue to cast doubt on his current judgment, trustworthiness, and reliability. Applicant did not provide sufficient evidence to establish that AG ¶ 20(a) should apply.

Applicant did not provide sufficient evidence to establish that AG ¶ 20(b) should apply. Similarly, he has not shown under AG ¶ 20(d) that he initiated and is adhering to a good-faith effort to pay or resolve his debts. Applicant has not participated in credit counseling and has not established that his debts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant challenges the IRS's conclusion that he owes \$19,000 in past-due taxes from TY 2019, but he provided insufficient evidence, such as corroborating documentation, to support his claim. The uncorroborated opinion of his tax preparer that he will eventually receive a refund is insufficient. Applicant also challenge the validity of the debt at SOR ¶ 1.I and was told that the debt remains valid. AG ¶ 20(e) does not apply.

Applicant did not provide sufficient evidence, particularly documentary evidence, to establish that he "has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements." AG ¶ 20(g) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 sets forth the security concern for personal conduct:

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 or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose any delinquent debts or past-due federal income taxes on his August 2021 SCA. Under Guideline E, the Government alleges that Applicant's failures to disclose that information, in answer to two questions about routine delinquencies (SOR ¶ 2.a), and another question concerning failure to pay federal, state, or other taxes, as required, (SOR ¶ 2.b) were deliberately false.

Applicant denied both allegations of deliberate falsification. When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

As to SOR ¶ 2.a, Applicant asserted in his Answer that he "was aware" that his USDOE student loans "were past due but [says he] wasn't aware that the accounts were in collections." I conclude that it is not established that he omitted them deliberately in answer to a question about debts reported to a collection agency.

As to SOR ¶ 2.b, Applicant indicated in his November 2021 background interview that earlier that month, he had received a letter from the IRS informing him that he owed \$20,000 in past-due federal income taxes for TY 2019. He volunteered this information in his interview and also asserted that this letter was the first he had heard of this debt. If this is correct, he was not aware of his federal tax debt when he prepared his SCA two months before, in August 2021. I conclude that deliberate falsification as to SOR ¶ 2.b is not established. AG ¶ 16(a) does not apply.

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(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.

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 Guidelines F and E in my whole-person analysis.

Applicant did not provide sufficient evidence to mitigate his delinquent debts, either his federal student loans in default or his past-due federal income taxes. He provided sufficient evidence to explain or mitigate his lack of candor about his debts on his SCA. He needs to establish that he has addressed, or is addressing, his past-due debts in a responsible way, through evidence of a track record of steady payments and financial stability, and he has not yet done so. Since Applicant did not request a hearing, I had no opportunity to question him about his debts, or to assess the reasonableness of his actions to address them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance. For these reasons, I conclude that while personal conduct security concerns are not established, financial considerations security concerns are not mitigated.

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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l, 1.m:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge