



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



In the matter of:)
)
) ISCR Case No. 22-01667
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2023

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant has multiple federal student loans as well as a mortgage and other debts that remain delinquent and unresolved. He has yet to establish a sufficient track record of financial responsibility and did not mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 19, 2020. On September 12, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The DOD issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on October 11, 2022, and provided additional documents. He elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On October 27, 2022, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on November 17, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM.

The case was assigned to me on February 21, 2023. The SOR and the Answer (Items 1, 2) are the pleadings in the case. The documents provided in the Answer as well as Items 3 through 6 are admitted without objection.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.k with explanation. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact:

Applicant is 34 years old and married. In 2013, he enrolled in a technical program and earned his associate's degree in 2015. Unable to find employment in his field of expertise, he worked a variety of jobs including as a baggage handler, a car service agent and a security guard. By 2019, he was not making enough money to pay all of his bills. That same year, he experienced a brief period of unemployment when he cared for his sick father. In 2020, Applicant started working with his current employer in a technical field related to his degree. (Items 3, 6)

Applicant did not list any delinquent debts in his October 2020 SCA. However, he voluntarily disclosed his delinquent debts in detail during his January 2021 background interview. (Items 3, 6)

SOR ¶¶ 1.a (\$9,238), 1.b (\$5,741), 1.c (\$4,989), 1.d (\$3,997), 1.e (\$3,950), 1.f (\$3,487), 1.h (\$951) and 1.i (\$877) are all past-due federal student loans with the U.S. Department of Education (DOE) that Applicant opened in 2013 and 2014. The debts total about \$33,000. During his interview, Applicant stated he had not made any payments on the loans since 2015 or taken any subsequent steps to repay the debt. However, he intended on setting up a payment plan as soon as possible. (Items 4-6)

In his March 2022 Response to DOHA's Interrogatories, Applicant stated he was in the process of making payment arrangements on the student loans. He submitted a copy of a March 2022 DOE Loan Rehabilitation application. There is no evidence that the application was approved or that he submitted any payments in compliance with it. An April 2022 credit report reflects that the loans are in collection status with the DOE as the creditor. (Items 4, 5)

In his Answer, Applicant admitted all of the delinquent student loans. He stated he was scheduling a payment plan and included a copy of his March 2022 Loan Rehabilitation application. He did not include any evidence of payments. (Item 2)

As of this writing, the repayment of several federal student loans are 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. See (<https://studentaid.gov/announcements-events/covid-19>).

SOR ¶ 1.g (\$1,453) is a charged-off credit card account. During his interview, Applicant disclosed that this account became late in 2019 and that he intended to satisfy it. In his March 2022 Response to DOHA's Interrogatories, he stated that "full payments have been made" and that a payment confirmation was attached. In support, he produced two documents confirming the settlement of a debt not alleged in the SOR. In his Answer, Applicant included one of these documents and again claimed the debt had been paid. However, neither the account name, number or other identifiable information from the document can be associated with this SOR debt. The debt is reflected as charged off in Applicant's April 2022 credit report. (Items 2, 4-6)

SOR ¶ 1.j (\$86) is a medical debt that was placed for collection. Applicant admitted the debt and stated he would resolve it as soon as possible. However, there is no evidence of a payment or other resolution of this debt in the record. (Items 2, 4-6)

SOR ¶ 1.k (\$44,756) is a joint mortgage account that is past due with a total loan balance of \$378,803. Applicant's April 2022 credit report reflects that the mortgage was opened in May 2017 with a date of last activity of May 2020. Applicant admitted the debt and stated he was a "co-signer to the house." He did not elaborate on when or why the loan became past due. He did not present any plan to bring the mortgage current or state whether he intended on refinancing or selling the house. (Items 2, 4-6)

Applicant's March 2022 paystub showed that he earned, with overtime, take-home pay of \$2,999 every two weeks. He did not specify how often he earned overtime. A Personal Financial Statement shows he maintained a net monthly remainder of about \$700. (Item 5)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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(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 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 not drawn 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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. . . .

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

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

The debts in the SOR, including multiple delinquent federal student loans, a past-due mortgage account, and other delinquent debts, are established by Applicant's admissions and the credit report in the record. The above disqualifying conditions apply.

There are three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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, 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.

Applicant acknowledged in his background interview that he had not made any payments towards his student loans since 2015. The loans remained delinquent for years prior to DOE's COVID moratorium on payments and Applicant's March 2022 Loan

Rehabilitation application. A credit report continues to show the loans in collection status. Additionally, his mortgage account, charged-off credit card and a medical account in collection remain delinquent and unresolved. His delinquencies are therefore ongoing. He has not established that his debts are due to circumstances that are unlikely to recur or no longer cast doubt on his judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

Applicant experienced some financial stress in 2019 when he earned insufficient income to cover his bills and took time off work to care for his sick father. AG ¶ 20(b) therefore has some application. However, Applicant has not shown he acted responsibly under the circumstances. His only attempt to resolve his student loans occurred in March 2022; long after the loans became delinquent and did not include any subsequent payments or payment plan. He provided no explanation for why his mortgage account remained significantly past due or a plan for resolving this debt. He failed to provide evidence that the charged-off credit card and medical account in collection are being resolved. AG ¶ 20(b) does not fully apply.

Applicant did not provide documentary or other corroborating evidence to show that he issued payments or made other good-faith efforts to resolve his delinquent debts. AG ¶ 20(d) does not apply. Applicant did not provide sufficient documentary or other evidence to establish that the financial security concerns are mitigated.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant did not request a hearing, nor did he respond to the FORM. In so doing, he did not provide any additional evidence in explanation or mitigation beyond his Answer. Following the completion of his associate's degree in 2015, Applicant did not take any action in resolving his delinquent student loans until he submitted his DOE Loan Rehabilitation application in March 2022.

Further, Applicant's student loans, mortgage and additional accounts remain delinquent, and he has not established any payments or shown other efforts towards resolving them. He has not established a reliable financial track record and has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not provide sufficient evidence to mitigate the financial 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-1.k:	Against Applicant

Conclusion

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

Bryan J. Olmos
Administrative Judge