



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



In the matter of:)
)
) ISCR Case No. 22-00023
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not take responsible actions to address his financial responsibilities. Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On January 3, 2020, Applicant signed a security clearance application (SCA). On February 17, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue eligibility for Applicant’s security clearance. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

In February 2022, Applicant provided a response to the SOR and requested a hearing. On January 23, 2023, the case was reassigned to me. On February 16, 2023, I emailed Applicant and Department Counsel to set the hearing date. (Hearing exhibit (HE) 1) On February 24, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 8, 2023, using the Microsoft Teams video teleconference system. His hearing was held as scheduled.

During the hearing, Department Counsel offered five Government exhibits (GE) 1-5 and a disclosure letter dated May 6, 2022 (HE 2); Applicant did not offer any exhibits, and the proffered Government exhibits were admitted into evidence without objection. I held the record open until March 22, 2023, in the event either party wanted to supplement the record with additional documentation. On March 16, 2023, Applicant submitted three documents and a statement which I labeled as Applicant exhibits (AE) A through D, and I admitted them into evidence without objection. DOHA received a copy of the hearing transcript (Tr.) on March 16, 2023. On March 23, 2023, the record closed.

Findings of Fact

In Applicant's February 2022 SOR response, he denied all three of the alleged delinquent federal student loans. (SOR ¶¶ 1.a-1.c) He did not provide an explanation for his denial or submit supporting documentation. The combined total of the delinquent loans was \$55,832. The 2020 and 2022 credit reports in the record support the financial allegations. (SOR response; GE 4, GE 5)

Applicant is 31 years old. He has never married, and he does not have any children. He earned a bachelor's degree in 2012 and a master's degree in 2015. He was continuously employed by other companies and federal contractors from 2016 to September 2022, except for a six-month period of unemployment in 2017. Since October 2022, he has been employed full time by a different federal contractor with a significant increase in his annual income. His job title is senior consultant, and his annual salary is approximately \$100,000. He requires a security clearance to perform specific duties for his employer. (Tr. 8, 17-24, 36; GE 1)

Financial Considerations

In January 2020, Applicant completed a SCA, but under the financial section, he did not disclose his delinquent federal student loans. In March 2021, he participated in a background interview with an authorized DOD investigator, and he was confronted about his delinquent loans. Applicant stated that his loan forbearance had expired, but he had not yet started to repay his loans because he was focusing on repaying other delinquent accounts. Once he had repaid his other accounts, he would then begin paying on his student loans. (GE 1, GE 2)

Applicant completed interrogatories in October 2021. He listed that he had arranged a payment plan for his delinquent student loans. He also listed that his loans were deferred under the Coronavirus Aid, Relief, and Economic Security Act (CARES

Act), and he would start paying on his student loans when they came out of deferment. (GE 3; Tr. 31-32)

On March 27, 2020, the CARES Act became law, providing for relief measures on Department of Education (DoED) owned federal student loans through September 30, 2020. This student loan debt relief received several extensions. In March 2020, as a result of the COVID-19 pandemic, the President directed the DoED to place federal student loans in forbearance. The federal government repeatedly extended the student loan payment pause. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collections on defaulted loans. See Federal Student Aid (FSA) website, <https://studentaid.gov/announcements-events/covid-19/>. (HE 2) On February 25, 2023, the FSA website said:

The student loan payment pause is extended until the U.S. Department of Education is permitted to implement the debt relief program or the litigation is resolved. Payments will restart 60 days later. If the debt relief program has not been implemented and the litigation has not been resolved by June 30, 2023 — payments will resume 60 days after that. We will notify borrowers before payments restart.

In August 2022, President Biden announced forgiveness of \$10,000 or \$20,000 of federal student loan debt, and on November 11, 2022, the DoED said they would continue to seek forgiveness of student loans. See “Statement from Secretary of Education Miguel Cardona on District Court Ruling on the Biden-Harris Administration Student Debt Relief Program,” <https://www.ed.gov/news/press-releases/statement-secretary-education-miguel-cardona-district-court-ruling-biden-harris-administration-student-debt-relief-program>. (HE 4)

Applicant testified at the hearing that he had received a basketball scholarship for his undergraduate education, and it paid for his college tuition. He applied for student loans to fund his education for a master’s degree. After graduating in 2015, he had his student loans placed into forbearance in about 2016, when his student loans became due. He was aware that he would have to reapply for forbearance again when the term expired, however, he could not recall if the term was one or two years. Despite knowing that the forbearance would expire in one or two years, *he testified he had assumed the loans were still in forbearance because he had never received any notification from the student loan creditor that the forbearance term had ended.* (emphasis added) He realized he needed to pay on his student loans at some point in time, but he just had not made it a priority. (Tr. 18-19, 22, 25-27, 29; SOR response)

Applicant provided inconsistent statements. He told the DOD investigator in March 2021 that he was aware his student loans were no longer in forbearance. He also testified, after further questioning by Department Counsel, that he thought his student loan forbearance term would expire in about 2018. He then admitted he had looked up his student loans online and realized they were outstanding. He needed to start loan payments, but he just did not have enough income at the time to make the loan payments.

He never initiated contact with the student loan creditor to request another loan forbearance, loan deferment, consolidation, or loan rehabilitation. (Tr. 29-30)

SOR ¶¶ 1.a, 1.b, and 1.c allege Applicant is indebted to the DoED for three student loans referred for collection in the total amount of \$55,832. The 2020 and 2022 credit reports showed that the three loans were opened between 2013 and 2014. Applicant testified at the hearing that he called DoED two weeks before the hearing and he applied for the Fresh Start program. This program assists student loan borrowers in getting their student loans out of default. (Tr. 27-32; GE 4, GE 5)

During the hearing, I requested Applicant fill out a personal financial statement (PFS), which I sent to him after the hearing concluded. The completed PFS showed that his monthly net remainder, after paying his monthly expenses, is approximately \$3,616.15. This amount did not include payments to his student loan creditor. (AE B)

After the hearing, Applicant provided a document from DoED dated March 3, 2023. The letter stated that DoED had received Applicant's February 23, 2023 request to enroll into the Fresh Start program. In about 15 days after this letter, his student loans would be transferred to another loan creditor. The new loan creditor would then contact Applicant and provide him with an online account and the amount of his monthly payments. At the time the record closed, Applicant had not yet been contacted by the new loan creditor or notified of the specific amount of his monthly loan payments. (AE C)

Applicant also submitted a screen shot of personal budgeting classes an individual could purchase and complete online. The screen shot did not show that Applicant had enrolled into the program or that he had successfully completed the financial classes. This evidence is insufficient to support his claim that he completed financial counseling. (AE D)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially

overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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.

The 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.

Applicant has a history of delinquent federal student loans as shown by the 2020 and 2022 credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable in this case:

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

The only delinquent debts Applicant has at this time are his three federal student loans totaling \$55,832. He makes a six-figure income, and he has been continuously employed since 2018. He was placed on notice when he filled out his SCA in January 2020 that a security clearance holder's financial history was of security concern to the government. In March 2021, he was confronted by the DOD authorized investigator about his delinquent student loans. He answered interrogatories in October 2021, and he received his SOR in February 2022. He had plenty of opportunities to take responsible action to begin repaying his delinquent loans. Applicant did not initiate contact with the DoED until after I sent him a February 16, 2023 email to see if he would be available to have his security clearance hearing on March 8, 2023. (HE 1)

Applicant's three delinquent federal student loans are currently deferred under the CARES Act. Although his student loans are currently in a deferment status, it is important to note that he has not made any payments to this creditor, which caused them to go in default a couple of years before the CARES Act was enacted and while he was gainfully employed. In March 2023, he received notice that he was accepted into the DoED Fresh Start program. His recent attempt to take action does not demonstrate responsible or good-faith action since he only completed the DoED forms after his access to classified information was at stake with his upcoming security clearance hearing.

I am unable to find that there were conditions beyond Applicant's control which contributed to his financial problems. He had a six-month period of unemployment in 2017, and he has been continuously employed since 2018. His PFS showed he had the financial means to pay on his student loans. In the context of his security eligibility, I find that Applicant did not act responsibly because he failed to dutifully address his delinquent student loans earlier. Under all of these circumstances, Applicant failed to establish that financial considerations 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 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are

incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant's inconsistent statements in the record are troubling. He did not initiate contact with his student loan creditor once he became aware that his loan forbearance period had expired. He could have made more of an effort to have the loans consolidated, rehabilitated, placed into deferment, or requested another loan forbearance. He also had several opportunities to take responsible action during his security clearance investigation, but he only took measures to address his student loans after he received notice of his security clearance hearing. His conduct demonstrates a lack of fiscal responsibility and raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort toward documented resolution of his delinquent student loans and financially responsible behavior, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration 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.c: | 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge