



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



In the matter of:)	
)	
)	ISCR Case No. 21-02523
)	
Applicant for Security Clearance)	

Appearances

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

05/11/2023

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. He failed to mitigate the security concerns raised by his history of financial problems and his intentional failure to disclose them on his security clearance application. Clearance is denied.

Statement of the Case

On January 28, 2022, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive) and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, implemented on June 8,

2017. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing on January 27, 2022. The Government submitted its written case on March 25, 2022. The Government provided Applicant a complete copy of the file of relevant material (FORM) and the Directive. Applicant acknowledged receipt on April 24, 2022, and he did not provide a response. Accordingly, the documents attached to the FORM are admitted as Government's Exhibits (GE) 1 through 5.

Findings of Fact

Applicant, 34, has worked for a federal contractor as a supply chain specialist since January 2018. He served in the U.S. Army Reserve from April 2009 to April 2017 but did not have access to classified information. He completed his first security clearance application in March 2021. He did not disclose any derogatory information. The investigation discovered derogatory financial information that was ultimately alleged in the SOR. The SOR alleged that he filed for Chapter 7 bankruptcy protection in September 2019 (SOR ¶ 1.a); that he owed \$23,567 on two charged-off accounts (SOR ¶¶ 1.b – 1.c); that he owed one collection account for \$773 (SOR ¶ 1.j); and that he had six delinquent student loans (\$25,308, SOR ¶¶ 1.d. – 1.i). (GE 2-5)

In an August 2021 interview with a background investigator, Applicant discussed the origin of his financial problems and his decision to file for bankruptcy protection. He explained that he began to experience financial problems after March 2017 when he was laid off from his full-time security job at a casino. He experienced additional financial stress, because he was also providing financial support to his father. According to the March 2021 security clearance application, Applicant had two sources of income between 2009 and 2017, the first being from his full-time security job at a casino and the second from his reserve duty. Since separating from the Army Reserve in April 2017, he has had only one source of income from his full-time employment. (GE 2-3)

Applicant decided to file for bankruptcy protection in September 2019 because his debt load was overwhelming, not because he was delinquent on any of his financial obligations. On the bankruptcy application, he reported monthly income of \$4,248 and monthly expenses of \$3,930, leaving him with only \$300 in disposable monthly income, and \$89,153 in total liabilities. The court dismissed the bankruptcy in November 2019, because he failed to pay the required filing fee. He subsequently retained an attorney to assist him with the bankruptcy filing. In 2021, after Applicant completed the security clearance application, his attorney filed a motion to vacate the bankruptcy dismissal. (GE 1,3,5)

When Applicant was asked during his August 2021 interview why he did not disclose the 2019 bankruptcy on his March 2021 security clearance application, he denied having any intent to withhold information from the Government. He explained that he did not disclose it because the bankruptcy was never processed but dismissed.

The relevant question, Section 26: Financial Record asks, “**In the last seven (7) years** have you ever filed a petition under any chapter of the bankruptcy code?” (GE 2-3)

The investigator also asked Applicant why he did not disclose any delinquent debts on the security clearance application. He further explained that he was unaware that any of his debts were delinquent or in collection status. Section 26: Delinquency Involving Routine Accounts asks, “**In the last seven (7) years have you had:** any voluntary repossessions; defaulted on any type of loan; had bills or debts turned over to a collection agency; any account charged off; been over 120 days delinquent on any debt on previously reported; or, currently 120 days delinquent on any debt? (GE 2-3)

In the background interview, Applicant admitted to having the vehicle financed by the debt alleged in SOR ¶ 1.c voluntarily repossessed and owing the alleged deficiency balance of \$10,622. The interview does not state when the voluntary repossession. The debt alleged in SOR ¶ 1.b (\$12,945) is for a car loan, and the debt alleged in SOR ¶ 1.j (\$773) is for a credit card. Applicant told the investigator that he stopped paying both debts because he could no longer afford them. The June 2021 credit report indicates that all three accounts were charged off. (GE 3,5)

In Applicant’s Answer to the SOR, he included documentation showing that the Chapter 7 bankruptcy petition was discharged in October 2021. The consumer accounts alleged in SOR ¶¶ 1.b, 1.c, and 1.j were among the discharged debts. He also included in his bankruptcy petition \$28,000 in student loans, alleged in SOR ¶¶ 1.d through 1.i. Student loans are not typically discharged in Chapter 7 bankruptcy. In the August 2021 interview, he stated that he placed the loans in a status that did not require payment. At the time of the interview, he reported making \$200 monthly payments towards the loans. The record does not contain any evidence to corroborate that claim. The June 2021 credit report indicates that the loans are in collection status. (GE 1,3,5)

Applicant’s loans, which are all held by the U.S. Department of Education, are currently in administrative forbearance under the student loan payment pause initiated by President Biden in March 2020. The payment pause stopped collection activities on defaulted student loans. For the duration of the pause, which is expected to last through August 2023, the loans are considered in good standing. Applicant did not articulate a plan for resolving the loans once the pause is lifted. (See, <https://studentaid.gov/announcements-events/covid-19#questions>)

Applicant attributes his financial problems to insufficient income, not extravagant spending, or financial irresponsibility. According to the financial information provided in the subject interview, he earns sufficient income to cover his living expenses, including his child support obligation. However, he only has \$200 in disposable income each month. (GE 3)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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. 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.

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.

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

Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] 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." (AG ¶ 18). Based on the information developed during the investigation, the SOR alleged that Applicant filed for Chapter 7 bankruptcy protection in September 2019, and that the petition was dismissed in November 2019. The SOR also alleged that he owed \$24,300 for three delinquent accounts, and six delinquent student loans totaling \$25,308. He admits the September 2019 bankruptcy filing and denies the nine alleged delinquent debts without explanation. (GE 1)

On its own the dismissed bankruptcy petition is not disqualifying. Applicant attempted to file without counsel and his failure to pay a fee resulted in the petition's dismissal. There is no evidence that Applicant was attempting to abuse the bankruptcy process or act dishonestly. However, the delinquent debts reported in the SOR, which are proven by the June 2021 credit report (GE 5), the bankruptcy petition (GE 4), and

Applicant's September 2021 background interview (GE 3) establish the Government's *prima facie* case. The following disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

The record contains sufficient evidence to establish that the financial concerns are partially mitigated. Applicant's financial problems do not appear to be caused by reckless spending or by financially irresponsible behavior, but a decrease in income since 2017 that has made it difficult for him to maintain his financial obligations. Applicant's decision to file for bankruptcy protection was reasonable, and a legitimate method of resolving his debt given his circumstances. He acted responsibly by retaining counsel to help him navigate the process, which resulted in the successful discharge of most of his debt, including the accounts alleged in SOR ¶¶ 1.b - 1.c, and 1.j. The following mitigating condition partially applies:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the person's control and the individual acted responsibly under the circumstances.

The status of Applicant student loans prevents a finding of full mitigation. Although the loans are currently in good standing under the administrative forbearance pause until at least August 2023, Applicant did not provide a plan to resolve the loans once the pause is lifted. Based on the financial information in the record, it does not appear that he can afford to resume payment of the debt and that the loans will return to delinquent status. While an applicant is not required to be debt-free to obtain a favorable determination, he is required to provide a plan for how he intends to resolve the remaining debts and establish that he has the means to do so. Absent that information, the financial considerations security concerns remain.

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 information. Of special interest is any failure to cooperate or provide truthful answers during national security investigative or adjudicative process. (AG ¶ 15)

The SOR alleges that Applicant intentionally falsified his March 2021 security clearance application by failing to disclose certain information under Section 26: Financial Records. Specifically, the SOR alleged that he intentionally failed to disclose his September 2019 bankruptcy petition, and he failed to disclose bills/debts turned over to collection agency or any suspended, cancelled, or charged-off credit cards in the seven years preceding the March 2021 security clearance application. Applicant admitted the allegations without explanation. (GE 1)

Based on the information in the June 2021 credit report, it is unclear which, if any, of the debts alleged in the SOR Applicant was required to disclose on the security clearance application. Applicant stated that he was not aware that any of his accounts were in collection or charged-off status. The record does not contain evidence to contradict or cast doubt on that statement. The collections section of the June credit report lists the nine accounts alleged in the SOR. While the notes of each debt may indicate the account status as charged off or in collection, it does not clearly state the date at which the account entered the indicated status. The report gives an “activity date,” but does not explain what the date signifies, nor can the meaning be extrapolated from the context in which it is presented. As such I cannot find that Applicant deliberately failed to disclose his collection and charged-off accounts. Accordingly, SOR ¶ 2.b is resolved in his favor.

However, the record contains sufficient circumstantial evidence that Applicant intended to withhold other derogatory financial information from the Government. He should have disclosed the September 2019 bankruptcy filing. His explanation for failing to disclose the bankruptcy is not credible. The language of the question is clear and plain on its face. The question does not list any exceptions or qualifiers. Though not alleged, Applicant should have also disclosed the voluntary repossession resulting in the debt alleged in SOR ¶ 1.c. This question, in the “delinquency involving routine accounts” section of the financial records questions, directly and clearly asks whether an applicant has had any property voluntarily repossessed in the last seven years. In his background interview, Applicant disclosed a voluntarily car repossession, which resulted in a deficiency balance from which he sought relief in his September 2019 bankruptcy filing.

In failing to disclose either of these events, Applicant gave the impression to the Government that he did not have any financial problems at the time he completed the security clearance application - an impression he knew was not true. He had been struggling financially since at least 2017. His financial distress became acute to the extent he sought relief in bankruptcy protection two years before he completed a security clearance application. Those problems were still present at the time he completed the application. His August 2021 interview with the background investigator led him to believe that his finances were an area of concern for the Government, prompting him to retain counsel shortly after that interview to vacate the dismissal of the September 2019 petition. Accordingly, personal conduct disqualifying condition 16(a), applies:

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 nation security eligibility or trustworthiness, or award fiduciary duties.

None of the personal conduct mitigating conditions apply. An applicant is required to provide full, frank, and candid disclosure to the Government at all times regardless of the potential consequences. Here, Applicant failed to report derogatory

information that could have compromised his ability to obtain a security clearance and a potentially more lucrative position.

Based on the record, I have remaining doubts about Applicant's current suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt collection proceedings. The AGs do not require an applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. Although Applicant made the reasonable decision to seek relief from his debt through Chapter 7 bankruptcy protection, he failed to take any action or articulate a plan regarding the rehabilitation or repayment of his student loans after the payment pause is lifted in August 2023. His failure to disclose derogatory financial information on his security clearance application casts doubt on his reliability and trustworthiness, and his ability put the interest of the Government above his self-interest.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c, 1.j	For Applicant
Subparagraphs 1.d – 1.i	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant
Subparagraph 2.b	For Applicant

Conclusion

Based on the record, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge