



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



In the matter of:)
)
) ISCR Case No. 21-02634
)
Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: Todd A. Hull, Esq.

05/16/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 20, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided responses to the SOR on February 7, 2022, and April 21, 2022 (Answer). He requested a hearing before an administrative judge. The case was assigned to me on January 31, 2023.

The hearing was originally scheduled for March 8, 2023. For good cause, I continued the hearing until April 26, 2023. The hearing was convened as rescheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 8 and Applicant Exhibits (AE) A through K without objection. Applicant and two other witnesses that he called testified at hearing. I received a transcript (Tr.) of the hearing on May 3, 2023.

Findings of Fact

Applicant is a 50-year-old employee of a government contractor for whom he has worked since June 2009. He is twice divorced. He was married from 1996 until 2007 and from 2010 until 2012. He has been remarried since March 2017. He has two children from his first marriage, ages 21 and 19. He also has a three-year-old child from his current marriage. He earned a bachelor's degree in 2004 and a master's degree in 2013. He served on active duty with the Air Force from 1992 until 2000, when he earned an honorable discharge. He has held a security clearance since 1992. Prior to the issuance of the SOR, he claimed that he had not had any issues related to his security clearance. (Tr. 46-50, 66-67, 93-94; GE 1, 8; AE A, B)

In the SOR, the Government alleged Applicant's five delinquent debts totaling approximately \$75,000 (SOR ¶¶ 1.a through 1.e). These delinquencies consist of federal student loans (SOR ¶¶ 1.a through 1.d) and a small credit-card balance (SOR ¶ 1.e). He admitted the SOR allegations with additional comments. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's credit reports. (SOR; Answer, GE 2-6)

The delinquent federal student loans totaling about \$75,000 listed in SOR ¶¶ 1.a through 1.d are being resolved. Applicant opened these student loans in about 2011 to finance his master's degree classes. He defaulted on his student loans because of a 2013 increase in his child support obligation from about \$250 to about \$1,800 per month for his two children from his first marriage. (Tr. 50-56, 65, 67-68, 72-82, 93-94; Answer; GE 1-8; AE H-K)

In 2013, when Applicant knew he might have financial difficulties, the Department of Education (DOE) granted his request for a three-year deferment of his student loan payments. He became delinquent on these loans in about May 2016 when his deferment period ended. He acknowledged that he knew he was delinquent in May 2016. Sometime in early 2017, he contacted the DOE and entered a payment arrangement to have \$500 per month directly debited from his debit card. Later in 2017, this debit card became invalid, but he did not update his form of payment with the DOE, so he defaulted on his payment arrangement. He did not update his payment information because he could not afford the \$500 payments at that time. (Tr. 50-56, 65, 67-68, 72-82, 97; Answer; GE 1-8; AE H-K)

Beginning in March 2020, all federal student loans were placed in deferment status because of the COVID-19 pandemic. Applicant defaulted on his student loans prior to their placement in this deferment status. Applicant provided documentary evidence that, in March 2023, he entered into a Fresh Start agreement with the DOE whereby his student loans were removed from a default status, placed back into good standing, and transferred to a loan service provider. He did not attempt to resolve these student loans between 2017 and March 2023. He testified that, despite his child support payment ending in May 2022, he waited until March 2023 to address his student loans because he was addressing other unspecified credit cards first. He acknowledged that the risk of losing his security clearance factored into his decision to resolve his student

loans. Credit reports corroborate that the student loan accounts are current. He claimed he has since made arrangement with his loan service provider to pay \$720 per month beginning in October 2023. He made his first payment to his loan service provider in the amount of \$1,200 ahead of schedule on April 24, 2023. He claimed he will set up automatic withdrawals to make these payments each month, but he cannot do so until his monthly payments are scheduled to begin. (Tr. 50-56, 65, 67-68, 72-82, 93-94, 97; Answer; GE 1-8; AE H-K)

The delinquent credit card in the amount of \$162 alleged in SOR ¶ 1.e has not been resolved. Applicant claimed that he believes his first spouse opened this account without his consent at the tail end of his marriage to her. He claimed that in March 2023, he called the creditor to try to resolve the account, but they could not find it in their system. He acknowledged that the risk of losing his security clearance factored into his decision to attempt to resolve this debt. He has taken no other action to resolve this account. The credit reports reflect that this account was opened in 2003 (four years before his divorce from his first wife). This account appears on the August 2020, October 2020, and March 2021 credit reports. It does not appear on the December 2021 or March 2023 credit reports. The March 2021 credit report reflects a May 2014 last activity date for this account, so the account may have aged off the December 2021 and March 2023 credit reports. He testified that he should have been consistently checking his credit reports so he would have known about this account. He claimed that he now regularly checks his credit reports. He claimed that he can afford to pay off the account and he would have done so if the creditor could locate the account. (Tr. 60-62, 83-86, 98; Answer; GE 2-4, 7, 8)

Applicant testified that when he realized his first marriage was ending and that he might have financial issues, he downsized his home and traded in his car for one that was less expensive. He acknowledged that he made a mistake in not communicating his financial issues with the student loan service provider or the DOE. He also testified that he realizes that he should have immediately tried to make a payment arrangement on his student loans instead of ignoring them. His child support obligation ended in May 2022, freeing up about \$1,800 in monthly income. He claims that he has enough money to pay all his bills and he will pay them. The March 2023 credit report does not reflect any delinquent debts. He provided a written monthly budget that reflects a monthly surplus of \$1,354. His budget does not reflect his student loan payments or the approximately \$400 per month he provides to his ageing parents, which will significantly reduce his surplus. Despite his omission of these significant, regular expenses, he testified that he has over a \$1,000 surplus at the end of each month. (Tr. 51-60, 62-63, 68-72, 90-92; Answer; GE 6; AE E-G)

Applicant and his spouse have a savings account with a balance of about \$90,000. However, most of the money in this account is his wife's, and he and his wife have declined to use that money to pay his individual expenses in the past. He has been contributing about \$200 per month to this joint savings account since about August 2022. For several months, this \$200 monthly amount went directly towards a car payment that was titled in his wife's name. He testified that he did not use this money to pay toward the SOR debts because he did not believe it was enough for a payment

arrangement. He provided statements showing that he had three individual checking accounts with balances of \$1,211, \$3,741, and \$425. He also provided documents showing that he earns about \$3,800 every two weeks. He earns about \$133,000 per year. While he was in default on his student loans, he took several international vacations that he claimed that his wife paid for with her money. He claimed that he never asked his wife to help him pay his delinquencies because they were his debts. He has not undergone any financial counseling but claims he is open to doing so. (Tr. 51-60, 62-63, 68-72, 87-92, 94-96; Answer; GE 6; AE E-G)

Applicant's former supervisor testified that Applicant did well at work while he was reporting to her. She provided him a performance award for his work and claimed he is trustworthy, a good person, and an asset to their employer. A colleague of his testified that he shows integrity, accountability, and a strong work ethic. The colleague also noted that he is an asset to their employer. She claimed that she is aware that he had financial issues after his divorce, but that he has recovered from those issues. She thinks highly of him and his family. Both his former supervisor and his colleague opined that he should have a security clearance. He has received positive performance reviews, promotions, and performance awards at work. (Tr. 32-45, 48-49; AE C, D)

Policies

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 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 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."

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 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.

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.

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’s federal student loans totaling about \$75,000 were in default beginning in 2016. A security clearance represents an obligation to the Federal Government for

the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information. ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While his student loans were no longer considered delinquent in March 2020 because of the COVID-19 deferment, that action does not excuse previously delinquent student loans such as these. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). Applicant also has an unresolved credit card with a small balance that has been delinquent since about 2014. The above listed conditions are made applicable by SOR ¶¶ 1.a and 1.b, thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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.

Beginning in March 2020, Applicant's student loans were in a deferment status because of the pandemic. However, he defaulted on these loans prior to this deferment. When student loans are automatically placed in a deferment status after they are in default, Applicant's past inactions are not excused in the context of security clearance eligibility. Despite being relieved of his \$1,800 child support obligations nearly a year ago, he took his first voluntary action to resolve his student loans only two months ago. He made his first attempt to resolve his still unresolved credit card two months ago. While his written monthly budget shows a surplus, that budget is inaccurate because it does not consider significant expenses. Given their history of not paying Applicant's delinquent expenses with their joint income, despite the large amount of money in their joint savings account, I do not consider that money to be a safety net for Applicant. His financial issues occurred recently. He has not established a track record of financial responsibility. He has not provided sufficient evidence that the behavior that led to his financial issues is unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's delinquency on his student loans was caused by a divorce and his child support obligations. These conditions were largely beyond his control. For AG ¶ 20(b) to be applicable, he must also provide sufficient evidence that he acted responsibly under the circumstances. He has not done so. Instead of asking his wife for help with his financial issues, he took expensive international vacations that his wife funded. Despite having about \$1,800 per month in income freed up beginning in May 2022, instead of addressing his SOR debts, he used his income to pay off his wife's car and then to contribute to a joint savings account that was already well funded. He did not attempt to contact the DOE between 2017 and March 2023. He did not attempt to contact the creditor for the credit card between 2014 and March 2023. Despite believing that his ex-wife may have opened the account without his consent, he did not dispute the account with the creditor or the credit reporting agencies. AG ¶ 20(b) does not apply.

Applicant claimed that the timing of the actions he took to address his SOR debts was based upon having the available income. However, the approximately 10-month delay between the end of his child support obligations and his resolution attempts undermine this premise. His financial contributions towards his wife's vehicle and their joint savings account also detract from this claim. He acknowledged that his desire to protect his security clearance motivated him to take the steps he did to address the SOR debts, and he waited until well after the SOR was issued. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. *See, e.g.,* ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). These considerations undermine his ability to show that he acted in good faith to resolve the SOR debts. AG ¶ 20(d) does not apply.

Applicant testified that he does not believe he owes the credit-card account because he assumes his ex-wife opened it without his consent. This possible fraud is a reasonable basis to dispute the legitimacy of this account. However, he has not provided evidence of actions he took to resolve the dispute. He did not provide evidence that he confronted his ex-wife about whether she opened the account in his name. He did not dispute the account with the creditor or the credit reporting agencies. He did not provide evidence that he contacted the police or filed a police report. AG ¶ 20(e) does not apply. He has not provided sufficient mitigating evidence.

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 have incorporated my comments under Guideline F in my whole-person analysis. I have also considered Applicant's honorable military service, his positive character evidence, good job performance, and the number of years he has held a security clearance without additional security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations 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.e:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge