



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



In the matter of:)
)
) ISCR Case No. 20-01459
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has provided evidence sufficient to mitigate the national security concern arising from his problematic financial history. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on April 10, 2019. On September 11, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. The DCSA CAF acted under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on March 15, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 31, 2022. The case was assigned to me on February 15, 2023. On March 24, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted in person on April 14, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified. The record was left open until April 28, 2023, to allow Applicant to submit exhibits. He timely submitted one exhibit that was marked as Applicant's Exhibit (AE) A and was admitted without objection. DOHA received the transcript (Tr.) on May 1, 2023.

Findings of Fact

Under Guideline F, the SOR alleged six delinquent debts; three federal student loans totaling \$18,718; two private student loans totaling \$5,111; and one consumer loan for \$793. (SOR ¶ 1.) Applicant admitted those allegations. (Tr. 56-58.)

Applicant is 63 years old and has been married since 1983. He has no children. He served on active duty in the U.S. Army from September 1979 to June 1991, when he was honorably discharged. He had a security clearance in the Army and has had clearances most of his life. (GE 1; Tr. 26.) From August 2013 to August 2014, he attended an out-of-state online college (the College) and earned an associate degree. (GE 1; Tr. 29, 38-39.) Since December 2022, he has worked as a lead cable technician for a defense contractor. In that capacity, he installs cables for Government electronic equipment. (GE 1; Tr. 25-27.)

Applicant was unemployed from October 2015 to February 2017. During that time, he collected unemployment and did "side jobs." He does not know his exact salary from 2017 on, but it was about \$68,000 to \$70,000 per year. He has received military disability benefits since 2014. He has a 90% disability and receives \$2,220 per month. (Tr. 28-29.) His spouse works full time for a Government security agency. He does not know her annual salary, but she is a GS-7 or GS-8 and has worked for that agency for about 10 to 15 years; she got that job in about 2008, "in that ballpark." (Tr. 29-31.)

Applicant is not contributing to a 401 (k). He "had one a few years ago, but can't recall where it was at." His memory "goes in and out cause [he] had two cuts on the back of [his] head from a tree landing. That's why [he gets] PTSD from the military." He "also passed out a few – about three months ago, two months ago. [He] had to go back to the hospital cause [he] fell in the tub again and [had] to go for another head blood clot or something . . . [His] memory is really, really short to certain things." (Tr. 30-31.)

Applicant's wife said he should retire, and he agrees with her. "[He] went to work after [his] injury about two months ago . . . and thought [he] was okay. [He] stayed home one day. The next day [he] went to work, [he] couldn't find [his] way to work. [He] was driving around on the highway and when [he] made it to work he came back home. [The] next day . . . [he] went to work and everybody said . . . You're not all here . . . something's

wrong with you.” So, he saw a doctor about his memory. “They said I had a concussion. So, I think retirement probably coming up on me real soon.” (Tr. 31.)

Applicant is not collecting Social Security. When he retires, Social Security and his military disability will be his sources of income. He owns his home and pays a mortgage of \$2,400 per month. His monthly expenses in addition to his mortgage are about \$1,000. His net monthly remainder is about \$2,000 to \$2,500. He uses that to pay some bills and maybe save for trips, “nothing big.” (Tr. 32-34.)

SOR ¶¶ 1.a – 1.e. Applicant testified about his student loans. By the date of GE 5 (April 25, 2019), all five student loans (three federal and two for his College) were past due or in collections. By the date of GE 4 (January 8, 2020), all five student loans were in collections. And by GE 3 (May 31, 2022), all five remained in collections. (Tr. 34-37.) The three federal loans have the following Narrative Codes on the most recent credit report: “Student Loan Assigned to Government Collection Account.” (GE 3.)

Applicant’s two College private loans were originated in 2013 and 2014, which was the period he was working on his associate degree. Those loans funded that degree. (Tr. 38.) He was asked what led him to believe that the GI Bill covered those loans. “I got a call . . . if I wanted to go to school, the Government would pay for my schooling.” He filled out an application and provided information to the school. He could not recall notifying the school in a formal writing that the GI Bill would cover his loans. He remembered: “[S]omeone was telling me you’re prior military, they’ll pay for your school. So I filled out a lot of papers, faxed a lot of papers back, and before you know it, I was in school.” (Tr. 39.) He could not answer what portion of his service made him eligible for the GI Bill. He assumed it was his active duty. He did not remember sending in any military documents confirming he was eligible for the GI Bill. (Tr. 40-41.)

Applicant first became aware that the GI Bill did not cover his loans or they were delinquent in 2014, 2015, or 2016 when he received a telephone call. He thinks he made a few payments over the phone. He thought he set up a payment arrangement but could not recall what the monthly payment was. He stopped making payments because he called the College and “the school is not there anymore . . . [he] thinks they closed down.” He could not recall to whom he was making payments. He did not stop making payments because he thought the College was out of business. He stopped because he “didn’t get no more payment or way to make payments.” He still has not. (Tr. 41-44.)

Applicant was asked about GE 2, his November 21, 2019 Personal Subject Interview (PSI). He agreed that in that interview he disagreed with the delinquent accounts, because he thought the GI Bill paid for his education. He confirmed that in November 2019 that is what he thought. He also agreed that he just testified that he learned that in 2015, but he did not know the exact dates. He confirmed that at the time he signed up for his schooling, he was told that the GI Bill would cover all costs. When “they sent me the paperwork to go to school, I was assuming that was from – that was for my GI Bill or Government paying for my school.” (Tr. 44-45.)

Applicant confirmed his usual practice: “When I receive a bill – I make the payment. If I didn’t receive a bill, I didn’t make a payment. As far as my memory is, I still haven’t received any more payment, so I don’t know where to go from there talking about 2015.” He was asked about the current status of his loans. He said: “The current status is does a bill still need to be and that I probably need a, I don’t know, a statement, numbers, or something, or who to send it to to confirm that they receiving this payment or just sending it to anybody.” He confirmed that his residence has been the same since 2010, and he has not changed his address since then. (Tr. 45-46.)

Applicant tried to contact the College to clear the matter up. He “can’t seem to get anybody – to confirm or call me back or – anything.” He is definitely willing and able to satisfy his financial obligations. He believes his financial situation is under control. He contacted his military contact, but they just signed him up for another university. He attended another university part-time from 2014 to 2017 and again in 2018. He thinks he paid for that himself or the GI Bill did. He is not sure. (Tr. 47-49.)

SOR ¶ 1.f. Applicant testified about this delinquent consumer loan for \$793. He recognized this debt and said he had paid it off. (Tr. 51-52.)

Applicant has filed his 2022 federal and state tax returns. He has never been behind on his tax payments or has had any tax delinquencies. (Tr. 52.)

The online college on which Applicant earned his associate degree closed its online instruction effective May 20, 2016. December 17, 2020
<https://federalstudentaid.gov>.

The student loan payment pause began in March 2020. The student loan payment pause is extended until the U.S. Department of Education [DOE] 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 [DOE] will notify borrowers before payments restart.

<<https://studentaid.gov/announcements-events/covid-19>> <https://studentaid.gov/covid-19/public-service-loan-forgiveness> <<https://studentaid.gov%3ecovid-19/public-service-loan-forgiveness>> .

Law and Policies

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

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the

whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F: Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise any questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's SOR debts are established by his admissions and the Government's credit reports. The record shows, however, that he has a net monthly remainder that could allow a modest payment plan. And he testified that his is willing and able to pay off these

loans with a plan. Therefore, AG ¶¶ 19(a) and (b) do not apply. But the credit reports do show a history of not defraying these loans. AG ¶ 19(c) applies.

AG ¶ 20 includes the conditions that could mitigate security concerns arising from financial difficulties. Of those mitigating conditions, only the following one might apply:

- (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.

Applicant's student loans originated in 2013 and 2014. Although that is quite some time ago, they remain in default today. And they were not infrequent. I cannot find that AG ¶ 20(a) applies.

According to current federal law, Applicant's federal student loans are not subject to repayment. Therefore, I find for Applicant on SOR ¶¶ 1.a through 1.c. The magnitude of his private student loans and one consumer account (\$5,904) does not raise national security concerns. Therefore, I find for Applicant on SOR ¶¶ 1.d through 1.f.

Whole-Person Concept

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. In applying the whole-person concept, an 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under that guideline and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a-1.f:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Philip J. Katauskas
Administrative Judge