



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



In the matter of:)	
)	
)	ISCR Case No. 20-03336
)	
Applicant for Security Clearance)	

Appearances

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

06/20/2023

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant has multiple federal student loans that remain delinquent and unresolved. His recent promises to pay are insufficient to establish a track record of financial responsibility and do 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 February 7, 2020. On April 15, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The CAF 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 May 17, 2022, and requested a hearing before an administrative judge. The case was assigned to me on March 14, 2023. On March 23, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing. I convened the hearing as scheduled on April 25, 2023.

During the hearing, Department Counsel offered Government Exhibits (GX) 1 through 3, which were admitted without objection. The Government's pre-hearing disclosure letter, dated June 30, 2022, and my case management order, dated May 5, 2023, are marked as Hearing Exhibits (HX) I and II, respectively. Applicant testified and did not submit any exhibits. The record was held open until May 12, 2023, for either party to submit additional exhibits, which neither did. DOHA received the hearing transcript (Tr.) on May 2, 2023.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a -1.d with no further explanations. 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 26 years old. He has never married and has no children. He attended college from 2014 through 2016, but did not obtain a degree. He has been with his current employer as an alarm respondent since June 2017. (Tr. 24; GX 1)

All four of the SOR allegations, ¶¶ 1.a (\$7,507), 1.b (\$7,473), 1.c (\$4,149) and 1.d (\$4,131), concern Applicant's delinquent federal student loans. In addition to Applicant's admissions, the debts are listed in collection status in his March 2020 credit report. (GX 3)

Applicant did not disclose any delinquent accounts in his February 2020 SCA. However, during his April 2020 background interview, he told the investigator that the student loans were related to tuition from his time in college. He claimed that he had assumed the loans had been closed after leaving college because he never received any communication from the college or the Department of Education (DOE). He further claimed that the student loans did not appear on his credit report and that he was "unaware" they were in collection. He assured the investigator he would take immediate steps to contact DOE and request a payment plan.

However, at his hearing, Applicant testified that he never took out student loans to finance his college education. Instead, he claimed that he received a "full-ride" scholarship to play football for the college. In fall 2014, he enrolled in classes and practiced with the football team. Because of poor equipment and field conditions, Applicant experienced a significant injury and did not play his entire first season. Still, he continued his studies. (Tr. 18-22)

In fall 2015, at the start of his second season, Applicant quickly experienced another injury and could not play. In spring 2016, his coach informed him that he was released from the team and had lost his scholarship. Applicant claimed that he went home that summer and never heard from the college again. With the loss of his scholarship, Applicant could not afford to continue his studies and left college. (Tr. 19-20, 35-37)

During his testimony, Applicant repeatedly claimed that he never applied for student loans and that his tuition, room and board were all covered by the scholarship. However, he did admit to meeting with financial counselors while at the college, although he could not recall any details of the conversations he had with them. He later admitted that it was possible he took out student loans, but had no recollection of doing so. (Tr. 22-23, 27, 65)

Applicant claimed that he first learned about his student loans when he checked his credit report in 2019, but he did not arrange any payments. Instead, he attempted to contact the college several times for clarification. He claimed the college had new staff who told him they had no record of his enrollment. During this time, he did not contact DOE. (Tr. 29, 53-56)

Even after his interview in April 2020, Applicant never contacted DOE or a credit-reporting agency to verify the validity of his student loans. Instead, he claimed he contacted a financial counselor, but could not recall any details about the person or business he contacted, and he did not engage in their services. He admitted that he became distracted by other personal matters and overlooked his loans.

Despite the uncertainty regarding the origin of his student loans, Applicant admitted responsibility for them. He testified that he planned to pay the loans, but still had not contacted DOE. (Tr. 30-32, 56-62)

Sua sponte, I take administrative notice of the fact that, in March 2020, payments on federal student loans were paused by presidential executive order as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The pause included several relief measures for eligible loans such as a suspension of loan payments; a 0% interest rate; and suspension of collection efforts on defaulted loans. More information about the CARES Act is available at the Federal Student Aid (FSA) website, <https://studentaid.gov/announcements-events/covid-19>.

I further note that, in August 2022, President Biden announced a plan for the forgiveness of various amounts of federal student loan debt. Litigation regarding the constitutionality of this plan followed, and a decision by the Supreme Court remains pending as of this writing. In December 2022, the DOE stated that the pause on the payment of student loans would extend through at least June 2023. <https://studentaid.gov/debt-relief-announcement>

Applicant testified that his annual salary was just under \$40,000. Even so, he was able to save about \$100 per month because he lived with his parents and kept his expenses to a minimum. However, Applicant also admitted that he had not filed his 2021 federal and state tax returns because he owed about \$400 to the state. He timely filed his 2022 tax returns and did not owe any additional taxes. His unfiled 2021 tax returns and delinquent tax debt are not alleged in the SOR. (Tr. 39-43, 59, 63)

Applicant stated he had no academic issues while attending college and has had no disciplinary issues with his employer. He acknowledged that he had been financially irresponsible over the past couple of years by not resolving his student loans, but that the hearing was a “wake-up call” and he promised he would start paying them.

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 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 two conditions that could raise security concerns under AG ¶ 19 and are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant's delinquent student loans are established by his admissions and the credit report in the record. The above disqualifying conditions apply.

There are four pertinent 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;

(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.

Applicant left college in 2016 because he lost his football scholarship. He claimed that he did not learn about his federal student loans until he reviewed his credit report in 2019. Once he learned about the loans, he contacted the college for clarification and was eventually informed they had no record of his enrollment. However, he never contacted DOE to ascertain the origin of the loans or establish a payment plan. Instead, he became distracted by other life events.

At hearing, Applicant committed to contacting DOE and paying his student loans. However, promises to pay delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019)

While Applicant's obligation to pay his federal student loans is currently paused under the CARES Act, his loans already were delinquent in March 2020. Moreover, complete reliance on the COVID-19 pandemic-based student loans deferment to establish mitigation of security clearance concerns is misplaced. See ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021); ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021).

Applicant's financial issues are recent and ongoing. While the circumstances that led to his departure from college were largely beyond his control, he has not shown responsible action by contacting DOE for clarification of his loans or by establishing a track record of payments.

Additionally, Applicant's unfiled 2021 tax returns and delinquent state taxes are not alleged in the SOR, but they undercut assertions of mitigation as they show additional unresolved delinquencies. Although he made some unspecified efforts to obtain financial counseling, his financial issues are unresolved. None of the mitigating conditions apply.

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.

In 2014, Applicant entered college on what he perceived to be a full football scholarship. However, two significant injuries in two years kept him off the field and he lost his scholarship in 2016. Although he has no recollection of taking out student loans, he admitted it was possible.

Once Applicant learned about his student loans in 2019, he did take some action in contacting the college. During his background interview, Applicant recognized the loans and stated his intent to resolve them. However, he never contacted DOE to seek clarification of the loans or establish a payment plan. Instead, he became distracted by other life events and he continued to neglect the loans.

Applicant described the hearing as a "wake-up call" to address his financial circumstances. I found his desire to address his financial concerns sincere. However, his statements and actions to date are insufficient to overcome the ongoing security concerns. He has not yet established sufficient good-faith responsible efforts to resolve his debts. He needs to establish a reasonable repayment plan towards his federal

student loan debt and his other, unalleged debts, and then take concrete steps to put that plan into effect. Overall, the record 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.d: **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