



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



In the matter of:)	
)	
)	ISCR Case No. 22-00999
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

07/20/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On August 16, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 2, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 17,

2023. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 9. Applicant did not object to any of the Items and they are admitted in evidence. Applicant provided responses to the FORM and documents that are marked as Applicant Exhibits (AE) A through G. There were no objections, and they are admitted in evidence. The case was assigned to me on May 1, 2023.

Findings of Fact

Applicant admitted the SOR allegations in ¶ 1.a and 2.a. He denied the SOR allegation in ¶ 1.b. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 60 years old. He earned an associate's degree in 2000 and a bachelor's degree in 2003. He married in 1993 and has two children, ages 30 and 28. He has worked for his present employer, a federal contractor, since January 2017.

The SOR alleges delinquent student loans (¶ 1.a \$43,614) and a delinquent credit card (¶ 1.b \$1,586) that are substantiated by Applicant's admissions in the SOR, during his interview with a government investigator, and credit reports from January 2021 and February 2023. (Items 3, 5, 6, 9)

In August 2021, based on information obtained through the DOD Continuous Evaluation Program, DOD sent Applicant's employer a supplemental information request, requiring Applicant to complete a current Questionnaire for Investigation Processing (e-QIP). He completed it in August 2021. (Item 6)

Section 26 of the e-QIP asked if Applicant, in the past seven years, had defaulted on any type of loan; had bills or debts turned over to a collection agency; or had been over 120 delinquent on any debt not previously included in the e-QIP. He responded "no" to all those questions. (Item 4)

In September 2021, Applicant was interviewed by a government investigator. When asked if he had any debts in collection, he responded that he did not. He was then confronted with collection accounts for student loans and a credit card. He explained to the investigator that he had no knowledge of the debts, and his wife handled all of the finances. He did acknowledge that he opened a student loan account in his name for the benefit of his daughter with the Department of Education. He was given an opportunity to provide additional documents and information after he spoke with his wife. He was also given a financial worksheet to complete. (Item 5)

Applicant contacted the investigator the next day by email and stated he and his wife did not feel they needed to complete the financial worksheet because they are not at fault. He also stated he was willing to pay the correct amount of the student loan. However, he did not agree with the loan term "consolidated loans." He then went on to

say that the borrower had the right to cancel if there was not a good option. It is unclear what this statement means. (Item 5)

In Applicant's response to the FORM, he provided a letter from the student loan creditor from January 2018, which stated that the consolidated application from Applicant was canceled on October 27, 2017. However, the creditor received an email from Applicant on November 14, 2017, to continue the process of consolidation. Applicant's application was reinstated effective November 15, 2017, and the creditor disbursed the funds on November 22, 2017. The creditor explained it did not receive another request to cancel the consolidation request until November 23, 2017. It stated in its letter:

Unfortunately, we were not able to cancel your Direct Consolidation Loan since the consolidation process had been complete and loan was disbursed on November 22, 2017. Once the consolidation is complete, we are unable to "unconsolidated" the loan. (AE B)

In October 2018, Applicant filed a complaint with the Consumer Financial Protection Bureau against the DOE Office of Federal Student Aid. He provided a copy of an email received in February 2020 noting they were working on his complaint. (Item 3)

In Applicant's response to the FORM, he stated that he contacted the student loan provider on November 23, 2017, to cancel the application for the loan due to a misunderstanding. He said the application was submitted on November 14, 2017, and he had ten days to make a change to the application, but his request for a change was "unreasonably" rejected. (AE A)

Applicant's February 2023 credit report reflects that he had several student loans that were acquired from 2011 through 2013. Applicant made payments on these loans and then in November 2017 they were refinanced. It appears this is when they were also consolidated. After that time, it appears he may have made some payments, but it is unclear. He did not provide any information on payments he previously made or why he may have changed the status of the loan. At some point, he stopped paying them and they went to collection. (Item 9)

Regarding the credit card debt in SOR ¶ 1.b, in Applicant's subsequent email to the investigator after his September 2021 interview, he stated that he had paid the creditor \$5,000, and he and his wife did not agree with the interest that was charged, believing it was an overcharge. (Item 5)

In Applicant's answer to the SOR, he provided a copy of an email from October 2018 that he sent to the creditor in SOR ¶ 1.b. He told the creditor that the amount of interest charged was incorrect and that he had previously contacted them in December 2017 requesting a corrected statement, but his request was ignored. He stated: "This [is] my last message to you please stop contacting me." (Item 5)

In Applicant's response to the FORM, he stated the amount alleged in SOR ¶ 1.b was incorrect due to an overcharge for interest on the credit card, and he had paid the credit card debt in full. He said the interest rate agreement was for 9.9% and he was charged up to 15%. No documents were provided. His credit report from February 2023 reflects the debt has been delinquent since January 2018 and remains unpaid. (AE A)

Applicant stated in his FORM response that he was willing to repay the student loan, (Sugg. I think "loan debt" is a bit redundant.) but the payments have been paused due to the pandemic. He stated he intended to start repayment when the program reopens. (AE E)

Applicant provided an email from November 2022 from Miguel Cardona, U.S. Secretary of Education regarding the student loan debt relief program and noted that Applicant was eligible for relief. However, the legality of program was challenged. He may be eligible under a new program. If approved, part of Applicant's student loans will be discharged. (AE F)

Applicant provided a DOE email noting that the pause on payments for student loans was extended through the end of June 2023 so those who qualified for debt relief would not have to make payments when their loans may be forgiven. (AE G)

Applicant provided a letter in his FORM response from his wife stating he does not know anything about their finances. She handles all financial matters. (AE E) He stated:

Since in the past to on August 2021, I did not know any financial in family. My wife, [LL], she took care and handled anything in finance. Until investigator my security clearance let me know about the debts. (AE E)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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 contained in the record. Likewise, I have avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has delinquent student loans and a credit card debt totaling approximately \$45,200 that he has been aware of since at least 2018 and has not paid. Although, he may dispute the consolidation of the loans, the evidence is clear that the money from the student loan creditor was disbursed and presumably used for Applicant's daughter's education. He refused to provide any information about his finances to make a determination if he was unable to pay his debts. There is no evidence either debt is paid. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;
- (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;

(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.

Applicant provided a series of statements about the student loans that were consolidated in 2017. He admitted the debt in his SOR answer; however it appears he has an ongoing dispute about the loans, but the specifics of the dispute are unclear. He failed to provide sufficient documents to substantiate why he is not responsible for the debt. He provided a letter from the creditor clearly spelling out the timeline and his failure to act within the time requirements. He did not provide substantiating documents to show the borrower could cancel if there was “not a good option.” It is unclear what the statement means or where it came from. He did not provide any evidence of actions he has taken to pay this debt since becoming aware it was a security concern in 2021. He did provide that he has applied for student loan debt relief, and if the program is implemented then his “approved debt” would be discharged. He did not provide evidence of the amount of his approved debt. However, it appears that the maximum amount under the program would be \$20,000. He said that he intended to pay his student loans when the forbearance is over.

Applicant denied he owed the debt in SOR ¶ 1.b. Although, he stated he was overcharged for interest, he did not provide any documents to show what the contractually agreed upon interest rate was, proof that he paid \$5,000 to the creditor, or how long the debt was delinquent. He provided a 2018 email he sent to the creditor advising them he disputed the interest rate and told them to not contact him again. There is no evidence he has contacted the creditor and resolved or satisfactorily disputed the debt. It remains on his 2023 credit report.

Applicant may rely on a potential student loan debt relief program to address a portion of his delinquent loans, but his failure to act upon them before they went to collection or take any meaningful action since becoming aware they are a security concerns raises questions about whether future behavior is unlikely to recur. I am not convinced it will not recur and find his conduct casts doubt on his reliability and good judgment. AG ¶ 20(a) does not apply.

There is no evidence Applicant participated in financial counseling. He refused to complete a financial worksheet reflecting his current financial obligations and assets, so the evidence is insufficient to conclude that there are clear indications his finances are under control or his financial problems are being resolved. There is no evidence he has initiated a good-faith effort to repay the creditors.

Applicant admitted the student loan in SOR ¶ 1.a but then provided a series of statements regarding the validity of the loan. He filed a complaint, but the specific

allegations are unclear. What is clear is that he received a disbursement for over \$43,000 and the debt is in collection. He did not provide a reasonable basis of a legitimate dispute or actions to resolve it. AG ¶ 20(e) does not apply.

Applicant denied and disputed the debt in SOR ¶ 1.b. He provided a document he sent to the creditor in 2018 that said he did not agree with the interest that was charged and told the creditor to stop contacting him. He failed to contact the creditor and resolve the debt. He did not provide documented proof to substantiate the basis of his dispute. He did not provide a copy of his agreement with the creditor with the interest rate, or proof that he paid \$5,000 and that satisfied the debt. AG ¶ 20(e) does not apply to this debt. Insufficient evidence was provided to apply any of the other mitigating conditions.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted SOR ¶ 2.a, which alleged he intentionally falsified his response to section 26 of the e-QIP which asked if he had any debts in collection. In his FORM response, he said his wife handles all financial matters and he did not know about the debts.

Applicant provided documentation that he was involved in communicating with the DOE and the credit-card creditor. He applied for a student loan consolidation through DOE and communicated to them regarding the possibility of canceling the loan and then subsequently filed a complaint regarding the loan. He also provided a document that reflected he contacted the credit-card creditor regarding the interest that was being charged on his account. He acknowledged that he had received and reviewed communications from the creditor and told them not to contact him again. Applicant was actively handling and disputing the accounts in the SOR. I did not find Applicant's

statements credible and find he deliberately failed to disclose his delinquent debts in his e-QIP. AG ¶ 16(a) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not correct his response to the e-QIP. He was interviewed by a government investigator and denied he had any delinquent debts. AG 17(a) does not apply. Failing to be honest on an e-QIP is not minor. The cornerstone of the security clearance process is that the Government trusts those who are granted security clearances to be honest and self-report issues or conduct even when no one is looking. Applicant failed to do that. AG ¶ 17(c) does not 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 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), 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 and Guideline E in my whole-person analysis.

Applicant did not provide sufficient documentation to support his claims. He failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations and Guideline E, personal conduct.

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.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge