



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



In the matter of:)	
)	
)	ISCR Case No. 22-01667
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

07/25/2023

Decision on Remand

OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, Financial Considerations. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 19, 2020. On September 12, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The DoD 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 October 11, 2022, and provided additional documents. He elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On

October 27, 2022, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 6. Applicant received the FORM on November 17, 2022 and did not provide a response.

The case was assigned to me on February 21, 2023. The SOR and the Answer (Items 1, 2) are the pleadings in the case. The documents provided in the Answer as well as Items 3 through 6 were admitted without objection.

On March 16, 2023, I issued a decision denying Applicant's eligibility for a security clearance. Applicant appealed. On May 16, 2023, the Appeal Board remanded the decision. Several of the debts in this case concern Applicant's federal student loans that arose from his attendance at ITT Technical Institute (ITT Tech). In its decision, the Appeal Board took administrative notice of a press release from the Department of Education (DoE) dated August 16, 2022, concerning the discharge of ITT Tech student loan debt, and noted that they had done so in previous cases. (Appeal Board Decision at 2, citing ISCR Case N. 21-01688 (App. Bd. Jan. 30, 2023)) In remanding the case, the Appeal Board directed that I "determine the impact of DoE's action on Applicant's student loans" and issue a new decision. (Appeal Board Decision at 2)

On May 23, 2023, as permitted by the Appeal Board, I reopened the record and allowed both parties to submit any additional exhibits or information. Applicant subsequently submitted five emails with statements and attachments that I have identified as AX A through E. The Government submitted additional argument but no additional documents and did not object to Applicant's exhibits.

I also notified the parties that I would take administrative notice (AN) of the DoE's August 2022 press release, as cited in the Appeal Board's decision. (AN I) The record closed on June 16, 2023.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.k with 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 34 years old and married. In 2013, he enrolled in ITT Tech and earned his associate's degree in 2015. Unable to find employment in his field of expertise, he worked a variety of jobs, including as a baggage handler, a car service agent and a security guard. By 2019, he was not making enough money to pay all of his bills. That same year, he experienced a brief period of unemployment when he cared for his sick father. In 2020, Applicant started working with his current employer in a technical field related to his degree. (Items 3, 6)

Applicant did not list any delinquent debts in his October 2020 SCA. However, he voluntarily disclosed several delinquent debts in detail during his January 2021 background interview. (Items 3, 6)

SOR ¶¶ 1.a (\$9,238), 1.b (\$5,741), 1.c (\$4,989), 1.d (\$3,997), 1.e (\$3,950), 1.f (\$3,487), 1.h (\$951) and 1.i (\$877) were all past-due federal student loans with DoE that Applicant opened in 2013 and 2014 for his studies at ITT Tech. The debts totaled about \$33,000. During his interview, Applicant stated he had not made any payments on the loans since graduating in 2015 and he had not taken any subsequent steps to repay the debt. However, he intended on setting up a payment plan as soon as possible. (Items 4-6)

In his March 2022 Response to DOHA's Interrogatories, Applicant included a DoE Loan Rehabilitation application, dated that same month, and stated he was in the process of making payment arrangements on the student loans. There is no evidence that he submitted any payments under this plan. The most recent credit report in the record, from April 2022, reflects that the loans were in collection status with DoE as the creditor. (Items 4, 5)

In his Answer, Applicant admitted all of the delinquent student loans and stated that a payment plan with DoE was pending. He did not include any evidence of payments. (Item 2)

However, in August 2022, DoE issued a press release stating it was discharging all student loans relating to ITT Tech that originated from 2005 through 2016. In the press release, DoE recited the troubled history of ITT Tech, specifically noting that ITT Tech had misled students about the quality of their programs for years in order to profit from the federal student loan programs. This announcement followed a series of lawsuits, settlements and other remedial actions taken by DoE against ITT Tech. In January 2023, Applicant received notice from DoE that his student loans were discharged as part of these efforts. (AN I; AX A)

SOR ¶ 1.g (\$1,453) is a charged-off credit card account. During his interview, Applicant disclosed that this account became delinquent in 2019 and that he intended to satisfy it. In his March 2022 Response to DOHA's Interrogatories, he stated that the account had been paid and that a payment confirmation was attached. In support, he produced two documents confirming the settlement of another credit card account in collection that was not alleged in the SOR. In his Answer and in his subsequent submission, he included a copy of one of these documents and again claimed the debt had been paid. However, neither the account name, number or other identifiable information from the document can be associated with this SOR debt. The debt is reflected as charged off in Applicant's April 2022 credit report. (Items 2, 4-6; AX B)

SOR ¶ 1.j (\$86) is a medical debt that was placed for collection. Applicant admitted the debt and stated he would resolve it as soon as possible. Following the reopening of the record, he provided a document showing that, in March 2023, the account was paid in full. (Items 2, 4-6; AX B)

SOR ¶ 1.k (\$44,756) is a joint mortgage account that was past due with a total loan balance of \$378,803. Applicant's April 2022 credit report reflects that the mortgage

was opened in May 2017 with a date of last activity of May 2020. In his Answer, Applicant admitted the debt and stated he was a co-signer to a mortgage. He did not elaborate on when or why the loan became past due or detail any plan to bring the mortgage current. (Items 2, 4-6)

Following the reopening of the record, Applicant detailed that he had co-signed for the mortgage, but did not own the home. He stated he was not aware that the loan was delinquent until he received the SOR. He then claimed that the owner had, without his knowledge, modified the mortgage and borrowed additional funds. Applicant stated he was pursuing court proceedings to force a sale of the property in order to be removed from the loan. (AX B)

However, Applicant later produced correspondence from an attorney clarifying that the mortgage had not been modified. Instead, the attorney speculated that the owner had likely added arrears to the loan balance and that there remained approximately \$150,000 in equity should the house be sold. (AX C)

Applicant did not provide any additional information regarding his efforts to be removed from the loan. Instead, he produced a transaction history from the mortgage servicer, dated March 2023, that reflected the mortgage had been in various levels of delinquency from early 2020 through the middle of 2022. However, a payment of about \$45,000 was posted to the account in October 2022. This, and subsequent smaller payments, brought the mortgage current. (AX D)

Applicant submitted a paystub and budget that showed he was maintaining full time employment with a net monthly remainder of about \$700. Applicant's employer described him as maintaining a strong work ethic and receiving exemplary praise from the various clients he served. (GX 5; AX E)

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 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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The adjudicative 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.

The history of delinquent debts reflected in the SOR, including multiple federal student loans, a past-due mortgage account, and other accounts in collection, are established by Applicant's admissions and the April 2022 credit report in the record. The above disqualifying conditions apply.

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b). ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013)

The Appeal Board has also stated that a security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

There are four 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;

(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 acquired sizeable student loans while studying at ITT Tech from 2013 through 2015. Although he did not discuss his experiences at that school, he struggled to obtain employment after earning a degree there. His income remained inconsistent through 2019 when he voluntarily took leave from work while caring for his father. He finally began earning a consistent income in 2020 when he started with his current employer.

Applicant stated his intent to address his student loans during his background investigation and eventually submitted a DoE Loan Rehabilitation application in March 2022. Before a payment plan was established, DoE fully discharged his loans. This came after DoE determined that ITT Tech had, for years, misled students about the quality of their programs and engaged in predatory lending practices.

Additionally, in 2017, despite his own financial struggles, Applicant co-signed for a mortgage but did not track the status of the account. On receipt of the SOR, he learned that the mortgage was substantially delinquent. A month later, the first of several payments was issued to resolve the arrears. The account remains current.

Applicant also resolved additional accounts not alleged in the SOR and recently paid his delinquent medical debt. While Applicant did not provide documentation to show specific payment of the SOR 1.g debt, his overall efforts at debt reduction reflect that he has acted responsibly under the circumstances.

Although Applicant could have documented his efforts to satisfy these debts earlier, he has established that he has no current financial problems. Moreover, the resolution of these accounts and his current financial situation reflect that his financial problems were a temporary aberration. I conclude that AG ¶ 20(e) applies to the student loans because of the details provided within the DoE press release and evidence showing that his student loans were discharged. With regard to the remaining

allegations, AG ¶ 20(b) applies because Applicant's employment issues and the need to care for his father were conditions beyond his control and he has acted responsibly under the circumstances. AG ¶ 20(d) applies because he acted in good faith, albeit late, to address his debts. AG ¶ 20(a) also applies because his debts occurred under circumstances that are unlikely to recur and do not cast doubt on his reliability, trustworthiness, or good judgment. Applicant has mitigated the security concerns.

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.

Applicant graduated from, the now discredited, ITT Tech in 2015. He struggled to find employment in his field of expertise and maintain consistent income. In 2019, he also spent a period away from work caring for his father. These events led to his financial delinquencies.

Applicant secured his current employment in 2020. Shortly afterwards, he resolved some delinquent accounts. In 2022, he applied for rehabilitation of his student loans. Before he made any payments, DoE discharged the loans. Additionally, when he learned that the mortgage account that he cosigned for was delinquent, he brought the account current and provided documentation showing that payments are now being made timely. He also provided a budget establishing his ability to maintain his accounts going forward.

With the additional information provided by Applicant, he has shown that his financial concerns are an anomaly. In review of the record evidence as a whole, I find

that he has mitigated the financial considerations security concerns. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for access to classified information.

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: FOR APPLICANT

Subparagraphs 1.a-1k: For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Bryan J. Olmos
Administrative Judge