



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



In the matter of:)	
)	
)	ISCR Case No. 23-00363
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2023

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 9, 2022. On March 2, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on March 6, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on March 29, 2023. On March 30, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections

and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on April 6, 2023, and did not respond. The case was assigned to me on June 28, 2023.

Evidentiary Issue

FORM Item 6 is a summary of an enhanced subject interview (ESI) conducted on November 16, 2022. The ESI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the ESI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and he was entitled to comment on the accuracy of the ESI; make any corrections, additions, deletions, and updates necessary to make the summaries clear and accurate; and object on the ground that the reports are unauthenticated. I conclude that Applicant waived any objections to the ESI summary by failing to respond to the FORM. "Although pro se applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR he admitted the allegations in SOR ¶¶ 1.a-b. He owes \$28,950 in delinquent student loan debt. He specifically listed SOR ¶ 1.b in his SCA. (Item 3 at 32 and Item 4 at 4-6.) His admissions are incorporated in my findings of fact.

Applicant is a 29-year-old tool crib assistant. He has worked for his sponsor since September 2022. He received an associate degree in 2015. He has never held a security clearance. He is engaged but has never been married and has no children. (Item 3 at 5, 9, 10, 18-19, 30.)

SOR ¶¶ 1.a-b are student loans placed for collection totaling \$17,645 and \$11,304. In Applicant's SCA, he cited the reason for the delinquency as the "cost of living keeps rising and the pay rate stays the same." He adds that "no action has been taken due to searching for stable paying job to provide for the high cost of living." (Item 3 at 32, 33.) The student loan debt alleged in SOR ¶ 1.a was assigned for collection in November 2018 and the debt alleged in SOR ¶ 1.b was assigned for collection in September 2016. (Item 5 at 2.)

Applicant worked in the food service industry while in school from 2013 until 2015. In 2016 he obtained his first job in his field. He left the company to complete a test and join another company, with a slight break in employment. In November 2020 he was let go and remained unemployed until September 2022. (Item 3 at 10-16 and Item 4 at 2.) During this period of unemployment, he took a trip in 2021 to a South American country for more than 20 days of tourism, and in 2022 he took a trip of more than 10 days to a Caribbean nation to visit family and friends. (Item 3 at 24-25.) He referenced working with a debt relief company in his ESI and that he had stopped making his student loan payments in order to pay his rent. (Item 6 at 7.)

Applicant's student loans appear to be current on the March 2023 credit report. (Item 4.) However, the balances remain the same as the delinquencies shown on the October 2022 credit report. (Item 5.) There is no evidence of any payments made on these student loans since March 2020. (Item 4 at 3-4.)

I have taken administrative notice that in March 2020, as a result of the COVID-19 pandemic, the President directed the Department of Education (DoEd) to provide the following temporary relief on DoEd-owned federal student loans: suspension of loan payments, stopped collections on defaulted loans, and a 0% interest rate. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided for the above relief measures through September 30, 2020. See Federal Student Aid (FSA) website, ISCR Case No. 20-02787 at 3 n.1 (App. Bd. Mar. 2022) This student loan debt relief was extended several times by subsequent Executive Orders. See <https://studentaid.gov/announcements-events/covid-19>. Congress recently barred any further extensions and DoEd has announced that student loan repayments will resume in October 2023. See <https://studentaid.gov/debt-relief-announcement>.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865

§ 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

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. . . .

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 several conditions that could raise security concerns under AG ¶ 19. The following are established by the evidence:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's federal student loans were assigned for collection prior to 2020. 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. See ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While his student loans may no longer be considered delinquent since 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). The above listed conditions are made applicable to SOR ¶¶ 1.a and 1.b, thereby shifting the burden to Applicant to provide evidence in mitigation.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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; and
- (d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant admits he has failed to settle the alleged debts and he provided no evidence he has availed himself of any of the COVID relief options. Even if he has availed himself of any of the COVID relief options it is his pre-Covid relief student loan delinquencies that led to collection and the insufficiency of the evidence that he acted responsibly under the circumstances that are determinative. AG ¶ 20(a) is not established.

AG ¶ 20(b) is not fully established. Applicant experienced almost two years of unemployment, a condition largely beyond his control. During that period of unemployment and while his student loans remained unpaid, he took a tourist trip to South America. His actions and statements regarding his handling of the debts alleged prior to any COVID relief options show that he has not acted responsibly under the circumstances. The Appeal Board in ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021) addressed this factual situation noting in that case "the Judge addressed this issue by concluding that, while the President's action effectively places Applicant's student

loans in a deferment status, “it does not excuse Applicant’s past inactions in the context of security clearance eligibility.” Decision at 9. A credit report in the record reflects that Applicant’s student loan delinquencies date back to at least December 2014. FORM Items 5 at 6-7 and 7 at 2. Based on that evidence, we find no error in the Judge’s conclusion.”

AG ¶ 20(d) is not established. Applicant provided no documentary evidence that supports his ESI statements that he had contacted his student loan creditors or worked with a debt relief company.

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 and applying the adjudicative factors in 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge