



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



In the matter of:)	
)	
)	ISCR Case No. 21-00670
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: *Pro se*

07/03/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant’s student loans were forgiven under the public service student loan forgiveness program. As for the remaining three debts alleged in the Statement of Reasons, totaling less than \$1,100, Applicant has satisfied one of them, and is going to develop a payment plan to satisfy the other two debts. I conclude Applicant has mitigated the financial considerations security concerns.

Statement of the Case

On March 10, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, alleging facts raising security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On April 29, 2022, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1.a and 1.d, and requested a hearing, whereupon the case was assigned to me on March 9, 2023. On April 14, 2023, the Defense Office of Hearings and Appeals issued a notice of video teleconference hearing, scheduling the hearing on May 3, 2023. The hearing was held as scheduled. I considered Applicant's testimony and two character witnesses, together with seven Government Exhibits (GE), marked and incorporated into the record as GE 1 through GE 7, and five Applicant Exhibits (AE), marked and incorporated into the record as AE A through AE E. I also received a copy of the discovery letter that Department Counsel mailed to Applicant. (Hearing Exhibit I) At the close of the hearing, I left the record open at Applicant's request to allow him the opportunity to submit additional exhibits. Within the time allotted, Applicant submitted one additional exhibit, marked and incorporated into the record as AE F. The transcript (Tr.) was received on May 15, 2023.

Findings of Fact

Applicant is a 45-year-old married man who is currently separated. He has two sons and one stepson. He is a veteran of the U.S. Navy, serving from 1995 to 1999. His discharge was honorable. (GE 7 at 9) Several years after serving in the Navy, he enrolled in college, earning a bachelor of arts degree in 2016. (Tr. 26) Since 2010, Applicant has worked as an engineering support specialist at a university research lab. (Tr. 26-27)

Applicant is highly respected on the job. According to his supervisor, his work is high quality and critical to the organization. (Tr. 53) The deputy director of the division testified that he heavily relies on Applicant's performance. (Tr. 56)

Over the years, Applicant incurred approximately \$58,000 of delinquent student loan accounts, opened between 1998 and 2012, as alleged in subparagraphs 1.d through 1.i, and approximately \$1,100 of delinquent commercial debt, as alleged in subparagraphs 1.a through 1.c. (Tr. 43). The student loan accounts were opened between 1998 and 2012. They were current through 2018. (GE 6 at 1, 4) Then, Applicant began struggling to meet these payments after one of his children began to experience serious chronic health problems which, at times, involved the need for trips to the emergency room in an ambulance. (Tr. 29, 35)

Unable to afford satisfying his student loan accounts, Applicant supplemented his income with the income from two part-time jobs, (Tr. 32-33, 45) In addition, he took several steps to generate more disposable income, including selling his home, and moving to a cheaper one, and paying off his car note. (GE 7 at 3) In May 2019 he began contacting his student loan creditors and entering into rehabilitation plans. (GE 6) By June 2022, the loans were rehabilitated. (Tr. 49) In March 2023, Applicant was notified that all of his student loans were forgiven under the federal government's public service loan forgiveness program. (AE E)

As for the remaining SOR debts, Applicant paid subparagraph 1.a, an \$83 cable television termination fee, in April 2022, and he is working on developing payment plans for the debts alleged in subparagraphs 1.b and 1.c, collectively totaling \$990. (Tr. 40)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall 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 ¶ 1(d) 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. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18) Applicant’s history of delinquent debt triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

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

Applicant’s financial problems were not caused by foolish or profligate overspending. Instead, they occurred when one of his children began experiencing serious medical problems that required costly treatment. Applicant addressed his financial problems by decreasing expenditures through selling his home and moving to a cheaper home, and through increasing income by taking on two part-time jobs. I conclude AG ¶ 20(b) applies.

Applicant’s student loans were forgiven through the public service loan forgiveness program, he satisfied the debt alleged in subparagraph 1.a, and he is working on a plan to pay down the remaining SOR debts. Consequently, AG ¶ 20(d) applies.

The overwhelming majority of Applicant’s debts were student loan accounts. Because Applicant has earned his college degree and his finances are stabilized, it is unlikely that he will incur delinquent student loan debts in the future. Moreover, the nominal amount of the remaining outstanding debts does not cast doubt on his current reliability and trustworthiness. In sum, there are clear indications that Applicant’s financial

problems are under control. I conclude that AG ¶ 20(a) applies. Applicant has mitigated the financial considerations security concern.

Whole-Person Concept

In reaching this favorable decision I considered the whole-person concept factors, particularly the cause of the financial problems, and their minimal likelihood of recurrence.

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 – 1.l:	For Applicant

Conclusion

Considering the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge