



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



In the matter of:)	
)	
-----)	ISCR Case No. 22-02074
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel O'Reilly, Department Counsel
For Applicant: *Pro se*

08/25/2023

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated the financial consideration and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is granted

Statement of the Case

On November 3, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Central Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing reasons why under the financial considerations and personal conduct guidelines the DCSA CAF could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on March 14, 2023, and requested a hearing. This case was assigned to me on June 29, 2023. A hearing was scheduled for August 4, 2023, via Microsoft Teams Teleconference Services, and was heard as scheduled. At the hearing, the Government's case consisted of eight exhibits. (GEs 1-8) Applicant relied on two witnesses (including himself) and five exhibits, which were admitted as AEs A-E without objection. The transcript (Tr.) was received on August 14, 2023.

Summary of Pleadings

Under Guideline F of the SOR, Applicant allegedly accumulated five delinquent Department of Education (DoE) student loan debts exceeding \$22,000. Allegedly, his student loans remain unresolved and outstanding.

Under Guideline E, Applicant allegedly falsified his Electronic Questionnaires for Electronic Processing (e-QIP) of November 30, 2020, by omitting his DoE student loans in default. Allegedly, his omissions were made deliberately.

In her response to the SOR, Applicant denied being delinquent in the repayment of his DoE student loans and denied any falsification of his e-QIP with explanations and clarifications. He claimed he was being honest in completing his e-QIP at all times.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor who seeks a security clearance. Admitted facts are adopted and incorporated by reference. Additional findings of fact follow.

Background

Applicant married in June 2006 and has two children (ages 10 and 21) from this marriage. (GE 1; Tr. 36) He earned a bachelor's degree in May 2017. (GE 1; Tr. 86) He enlisted in the Marine Corps in January 2000 and served 12 years of active duty before his retirement in July 2012 with an honorable discharge. (GE 1; Tr. 37)

Since December 2017, Applicant has worked for his current employer as a logs and records specialist. (GE 1; Tr. 71) He reported unemployment between August 2016 and December 2017 and brief employment with another employer between June 2016 and August 2018. (GE 1) Applicant reported another period of unemployment between July 2012 and May 2013 following his military discharge. (GE 1) He has held a security clearance since 2018. (GE 1)

Applicant's finances

Between 2013 and 2017, Applicant took out student loans with the (DoE) to finance his college education. Altogether, Applicant accumulated student loans

exceeding \$22,000. (GEs 2, 5-8) Beginning in 2017 (following the expiration of his student loan forbearance from the DoE, he made payments to a third-party intermediary who he believed at the time to be forwarding his payments (through his spouse who manages his finances) to the DoE through an authorized DoE agent intermediary. (GE 3; Tr. 26-28, 50-56, 80-83) This agent intermediary failed to forward Applicant's payments on to the DoE as required by Applicant's payment agreement. (Tr. 31-34). The intermediary has since been liquidated and is unavailable to account for the payments that Applicant made. (Tr. 46-47)

Applicant has the means to pay his student loan debts as they become due and is currently in good standing with the DoE on his student loans. (AEs A-E and G; Tr. 58-62, and 85-87) He currently earns around \$80,000 a year from his work and receives an additional \$20,000 a year in Veterans Administration (VA) disability payments. (Tr. 43-44, 75)

Based on a review of the record as a whole, Applicant's documented evidence is sufficient to surmount the Government's *prima facie* case. Applicant's evidence substantively and credibly explained, extenuated, and mitigated the Government's concerns about the state of Applicant's finances. Under the Adjudicative Guidelines covering financial consideration concerns, Applicant's student loan delinquencies have been extenuated and mitigated under the applicable mitigating conditions (MCs) as follows: MC ¶¶ 20(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 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."

Addressing the allegations of Applicant's falsifying his e-QIP, Applicant's presented evidence of a good-faith misunderstanding of his being delinquent on his student loan obligations is both credible and convincing. Based on a full and careful consideration of the Government's evidence and Applicant's challenges, inferences and conclusions are warranted that allegations of falsification of Applicant's e-QIP are unsubstantiated.

Considering both the applicable mitigating conditions covered by Guideline F and the absence of substantiating evidence of falsification, a whole-person assessment of Applicant's clearance eligibility is supported by a sufficient demonstration of restored financial responsibility by Applicant in the management of his finances to enable him to maintain sufficient control of his finances to meet minimum standards for holding a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. And, I conclude financial considerations and personal conduct security concerns are fully mitigated. Eligibility for access to classified information is granted.

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:

Guideline F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a-1.e: For Applicant

Guideline E (PERSONAL CONDUCT): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

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

Roger C. Wesley
Administrative Judge