



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



In the matter of:)
)
) ISCR Case No. 21-02717
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant’s federal student loans were delinquent for several years after he and his wife experienced employment instability. The loans are now current and in forbearance status, and Applicant is well positioned to address his debts once payments come due, as he has ample income and no other significant delinquencies. Applicant has mitigated the financial considerations security concern. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 13, 2020. On April 5, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The CAF 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

On April 5, 2022, Applicant answered the SOR and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on June 1, 2023. On July 6, 2023, DOHA issued a notice scheduling the hearing for July 27, 2023, by video teleconference through an online platform.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4. Government Exhibits 1, 3, and 4 were admitted into evidence without objection. I sustained Applicant's objection to GE 2, an unauthenticated summary of Applicant's security clearance background interview, and I did not admit it in evidence. (Tr. 15-16) Applicant testified and submitted Applicant's Exhibits (AE) A through D, all of which were admitted without objection. I held the post-hearing record open until August 10, 2023, to allow Applicant the opportunity to provide additional documents. He timely submitted six documents, which are marked as AE E through J and admitted without objection. DOHA received the hearing transcript (Tr.) on August 4, 2023.

Findings of Fact

Applicant admitted SOR ¶¶ 1.e and 1.f. He denied that his federal student loans (SOR ¶¶ 1.a-1.d) were delinquent, as alleged. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He has been married since 2018. He and his wife have a five-year-old son and an 18-month-old daughter. He also has an eight-year-old son from a prior relationship. (GE 1; Tr. 22, 29) After graduating from high school in 2005, he served in the National Guard from 2006 to 2020. His service included a deployment to Iraq in 2009 to 2010. He was discharged honorably. Applicant attended community college in 2010 to 2011 and had some technical school training in 2019. (GE 1; AE H, Tr. 40-41)

Applicant was a DOD employee from 2014 to 2017 as a mechanic. He held various other jobs, mostly in the defense industry, in the years since then. He has worked for his current employer and clearance sponsor since February 2022. He now works in information technology. He earns a \$110,000 annual salary. He has a clearance (GE 1; AE F; Tr. 8, 27, 48-49, 53)

Since September 2022, Applicant has also worked a second job, earning \$50 an hour. He took the second job to pay down his credit card debt and said he has been making "great strides" in doing so. (Tr. 29-30, 36-39) He assessed that he earns about \$8,500 a month from his two jobs combined. (Tr. 49-50)

The debts in the SOR are established by credit reports from September 2020 and May 2021. (GE 3, GE 4) Applicant disclosed some debts on his SCA and said they occurred because his wife lost her job. (GE 1)

SOR debts ¶¶ 1.a (\$10,262), 1.b (\$10,193), 1.c (\$4,744), and 1.d (\$4,415) are past-due federal student loans owed to the Department of Education for a total of \$29,614.

(GE 3, GE 4) Credit reports reflect that the accounts were last active in either February 2017 (GE 4) or September 2020. (GE 3)

Applicant took three or four semesters of community college classes, from 2010 to 2011, after returning from his overseas deployment. He took out about \$18,000 in federal student loans. They came due in 2012 when he entered the workforce. He did not make any student loan payments from 2012 to 2017. In part, this was because he did not have a solid job or good income until joining DOD in 2014. (Tr. 19-23, 42-43) His wife also lost her job as a logistics manager twice, once in 2018 and again in 2020; the second job loss was due to the impact of COVID-19. She remains unemployed. (Tr. 28-29)

Applicant said he signed an agreement with the student loan collector in 2018 to bring his accounts into good standing. He had to make nine payments of \$100 a month to do so. He believes his loans have been in good standing since then. He was told that a new debt collector will assume his student loans but was not told whom to pay. He said he calls every month to try to learn if the loans have been reacquired. (Tr. 19-26, 30-39)

Applicant was not required to make payments after the loans were placed in forbearance status by the Department of Education at the beginning of the COVID-19 pandemic in early 2020. He used the opportunity to address other debts such as credit cards. He knows that the program is ending in October 2023. He made a \$150 payment in July 2023. (AE E) During the forbearance program, he addressed other debts, such as credit cards. (Tr. 19, 26, 30-39)

Applicant documented payoff information for his student loans as of July 21, 2023. He is in good standing, and a current credit report confirms this. (AE A, AE B, AE I) He intends to begin an aggressive repayment plan once the student loans come out of forbearance without exhausting his credit. (Tr. 26-27, 47-48, 58)

SOR ¶ 1.e (\$274) is an account that was charged off by a bank. (GE 3, GE 4) Applicant testified that this debt has been resolved. SOR ¶ 1.f (\$688) is an account placed for collection by a phone company. (GE 3) He paid this debt in late June 2023 (Tr. 44-46) He documented two other debt payments from June 2023, an energy bill and an entertainment account. (AE C, AE D)

Applicant has a 401(k) plan and savings in a bank account. Those documents reflect that has several thousand dollars in savings. (AE F, AE G) He pays \$1,000 in child support for his oldest son. A current credit report shows a balance of about \$41,000, though the account is now current. (AE I). Applicant has no other delinquencies or extravagances. His monthly expenses are in good standing. He has no tax debt or unfiled tax returns. He has not had formal credit counseling, but the family uses a budget. (Tr. 30-31, 46-47; AE I)

Applicant acknowledged that he has made some poor financial decisions. He wants to continue to build good credit. He loves his job and loved serving his country in uniform. (Tr. 51, 58)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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.” Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following AGs are potentially applicable:

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

Applicant used federal student loans to finance his education from about 2010 to 2011. The loans were delinquent for several years because he had sporadic employment and did not make any payments. (GE 3) The debts were then placed in forbearance in early 2020 by the Department of Education due to the COVID-19 pandemic. The other past-due SOR debts (¶¶ 1.e and 1.f) are also established. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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, or 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 incurred federal student loan debts to finance his education in about 2010 to 2011. His loans became delinquent due to his employment instability several years ago, and the family's finances were also negatively impacted when his wife lost her job. AG ¶ 20(b) therefore has some application. Applicant rehabilitated his loans in 2018. The loans were then placed into forbearance status by the Department of Education during the COVID-19 pandemic, beginning in early 2020. Applicant did not have to make student loan payments during the forbearance period. Instead, he used the opportunity to address other debts, such as credit cards. Of note, he took a second job to increase his income and address his debts. A recent credit report reflects that the student loans are in good standing. No other significant delinquencies are reflected on a recent credit report. Applicant has ample savings with which to address his student loans once

repayments resume. I conclude that Applicant's actions towards his debts are reasonable under the circumstances and that AG ¶¶ 20(b) and 20(d) 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(c):

- (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's student loans became delinquent during periods of employment instability for himself and his wife. They have been in forbearance status during the COVID-19 pandemic. They are now in good standing. Applicant earns a good living and has been working two jobs in an effort to address his debts. This evidence, as well as the fact that has no other significant delinquencies, enhanced the credibility of his assertions that he will address his student loans responsibly going forward. He is well-positioned to address his student loan debts aggressively when repayment begins, and I believe he will do so. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance.

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.f:	For Applicant

Conclusion

In light of all of the circumstances presented, 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.

Braden M. Murphy
Administrative Judge