



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



In the matter of:)
)
) ISCR Case No. 22-02042
)
Applicant for Security Clearance)

Appearances

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

10/04/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 24, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided an undated response to the SOR (Answer). He requested a hearing before an administrative judge. The case was assigned to me on June 20, 2023.

The hearing was convened as scheduled on September 20, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 5 and Applicant Exhibits (AE) A through C without objection. Applicant also testified at the hearing. I left the record open after the hearing to provide Applicant an opportunity to provide post-hearing documents, and he timely provided AE D, which I admitted without objection. I received a transcript (Tr.) of the hearing on September 27, 2023.

Findings of Fact

Applicant is a 43-year-old employee of a government contractor for whom he has worked, on and off, since December 2018. He was married from July 2007 until September 2016. He currently has a girlfriend with whom he cohabitates. He has one 15-year-old child with whom he shares custody with his ex-wife. His girlfriend's two children also reside with him. He earned a bachelor's degree in 2015. He served on active duty with the Navy from 1999 until 2007, when he earned an honorable discharge. (Tr. 22-23, 28-37, 43-44, 63-64; GE 1, 4)

In the SOR, the Government alleged Applicant's 18 delinquent federal student loans and one delinquent tuition account totaling approximately \$71,000 (SOR ¶¶ 1.a through 1.s). He denied all the SOR allegations. Despite his denials, the SOR allegations are established by the Government's 2021 and 2022 credit reports. (SOR; Answer, GE 2, 3, AE D)

None of the SOR debts were being resolved prior to the hearing. Applicant and his ex-wife opened these federal student loan and tuition accounts with the Department of Education (DOE) and the online college beginning in about 2011, to finance their higher education expenses. Applicant claimed that his ex-wife took care of the family finances, while he worked. He recalls signing a packet of documents that was an application for student loans, but he did not look at the packet closely and cannot recall the specifics, such as loan amounts. He claimed that his ex-wife led him to believe that she was only borrowing money to pay for Christmas presents and to upgrade his gaming personal computer. However, he acknowledged that when he signed the loan packet, he knew he was applying for a student loan and may have authorized the full student loan and tuition balance alleged in the SOR. (Tr. 22-27, 38- 44, 58-59; GE 1-4; AE A, C, D)

Appellant suspects that his ex-wife opened additional federal student loans in his name without his knowledge and consent. However, he provided no corroborating evidence to this effect. He provided printouts of a selection of text messages between him and his wife over several years, but those text messages are inconclusive as to whether she did so. In those text messages, he blames her for taking out the loans and tuition and she disagrees and claims they both applied for them. He also acknowledged that the loan package he signed may have been for the full loan and tuition amount because he did not read the documents. He claimed that he and his wife both had G.I. Bill benefits and therefore did not need to apply for student loans. However, he did not explain why he agreed to apply for federal student loans that he allegedly did not need. (Tr. 22-27, 38-44, 58-59; GE 1-4; AE A, C, D)

Applicant claimed that he first became aware of the full extent of his student loan and tuition indebtedness in about July 2015, when he happened to look at his account information online. Based upon his ex-wife's representation to him, he believed for some time that she could get all the indebtedness forgiven if she received a higher disability rating from Veterans Affairs (VA). He claimed that from the time repayment was required until about 2016, his ex-wife deferred the federal student loans with the

service provider. She stopped these deferral requests in about 2016 when they divorced. Applicant claimed they divorced because he caught her cheating on him. (Tr. 22-25, 42-49; GE 1, 4; AE A, C, D)

After Applicant and his ex-wife divorced in 2016, the deferments on the federal student loans ended, and all the SOR debts became delinquent. He began receiving notices that he was late with his payments on his federal student loans. Other than arguing with his ex-wife as to who was responsible for repayment, he took no action to address the SOR debts until about February 2020. He did not attempt to negotiate her responsibility for the debts as part of the divorce proceeding. He did not dispute the debts with the DOE or its loan service provider. He did not dispute the debt with the credit reporting agencies. He did not bring criminal charges against his ex-wife, and he did not bring a civil suit against her. (Tr. 22-25, 44-58; GE 1, 4; AE C, D)

In about February 2020, he contacted the loan service provider for the federal student loans and arranged to automatically pay \$5 per month. He made no more than two monthly payments pursuant to this agreement before, at the end of March 2020, President Biden ordered that all federal student loans were placed in a deferment status during the COVID-19 pandemic, and those payments stopped. He provided no evidence to show that any of the SOR debts were not delinquent prior to being placed in a deferment status. The Government's 2021 and 2022 credit reports show that the SOR debts were in collections. Therefore, I find that Applicant's federal student loans were delinquent before the COVID-19 deferment began. (Tr. 24-25, 50-58; GE 1, 4; AE B, D)

The COVID-19 deferment on federal student loans has ended. As Applicant's federal student loans were deferred because of COVID-19, he stopped making his \$5 monthly payment after March 2020. He did not make any payments from then until after the hearing. He does not know how much his monthly payment on his loans will be. As of the hearing, he had not contacted the DOE or the loan service provider to determine this information. He is unsure whether he will have the available funds to pay his minimum monthly payment when it becomes due as he does not follow a written budget. After the hearing, he made a \$110 payment towards some portion of the student loans listed in the SOR. He provided no evidence that he has attempted to resolve the online college tuition account. He claimed that he has about \$1,600 in a checking account and \$6,400 invested in cryptocurrency. (Tr. 24-25, 50-68, 70-71; AE B, D)

While the federal student loans are listed as "pays as agreed" in one portion of the Government's 2023 credit report, there is no evidence that this status is a result of Applicant's resolution efforts. He testified that he does not know why the credit report reflects that change. Moreover, the student loans are also listed as "at least 120 days or more than four payments past due" elsewhere in that credit report. There is also no evidence of a favorable resolution of the tuition account. While they are not alleged in the SOR, the Government's 2023 credit report reflects that he is also no more than two payments behind on a mortgage and an auto loan. The same credit report reflects that he took out a loan for \$6,000 in 2022 to go on vacation. (Tr. 56-57, 62-63; GE 5; AE B)

There were several reasons that Applicant was unable to pay the SOR debts. Initially, the cause was that he failed to keep track of his own finances and let his ex-wife take care of his financial obligations. While she may have made it difficult for him to determine how much money he had borrowed, he was still responsible for reading the loan documents he signed and for monitoring his financial accounts. He ultimately learned of the total amount of his federal student loans and tuition by simply logging on to his online account. There is no evidence in the record to indicate that he was unable to make that determination any time between 2011 and 2015. (Tr. 22-25, 28-35, 37-49; GE 1, 4; AE A)

Once Applicant did his due diligence and became aware of the SOR debts in 2015, his failure to address these accounts was caused partly by his own inaction and partly by a divorce, unemployment, and underemployment. He was unemployed from sometime in 2017 until December 2018, then worked part time for his current employer until December 2019. Beginning in December 2019, he worked full time with his current employer and then another employer until the spring of 2023. Since the spring of 2023 he has been back with the same employer for whom he worked beginning in December 2018 but is only working part time. He has also worked part time as an insurance salesman and a photographer. (Tr. 22-25, 28-35, 42-49, 65-70; GE 1, 4; AE D)

Applicant submitted numerous character letters from family, friends, and co-workers, some of whom were members of law enforcement or the military. All reference his integrity, honesty, reliability, and strong work ethic. They also write that he is an excellent father to his son and a positive role model in the community. Some note his difficult relationship with his ex-wife and blame her for his financial issues. (AE A)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, 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 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 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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.

The 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.

Applicant's federal student loans totaling about \$71,000 were in default beginning in 2016 until the March 2020 COVID-19 deferment. 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. ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While his student loans were no longer considered delinquent in 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). He also had a delinquent tuition account. The above listed conditions are made applicable by these debts, thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the 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, 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.

Beginning in March 2020, Applicant's student loans were in a deferment status because of the pandemic. However, he defaulted on these loans in 2016 prior to this deferment. When student loans are automatically placed in a deferment status after they are in default, Applicant's past inactions are not excused in the context of security clearance eligibility. He did not take any action to prepare to pay his student loans when the deferment period ends in October until after the hearing and acknowledged that he may not have the requisite funds to make his payments. He has not provided any evidence of resolution efforts with respect to his tuition account. He is also behind on

two other financial accounts not listed in the SOR. His financial issues are ongoing, and he has not established a track record of financial responsibility. He has not provided sufficient evidence that the behavior that led to his financial issues is unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's delinquency on his federal student loans and college tuition was caused by conditions both within his control and beyond his control. The existence and creation of the student loan and tuition accounts was within his control because he signed a student loan application without reading it and did not keep track of his own finances. To the extent that these delinquencies were caused by his divorce, unemployment, and underemployment, for AG ¶ 20(b) to be applicable, he must also provide sufficient evidence that he acted responsibly under the circumstances. He has not done so. He did not attempt to contact the DOE or the loan service provider between 2016 and February 2020.

Applicant also did not contact either the DOE or the loan service provider to arrange to make his payments despite the imminent end of the COVID-19 deferment period until after the hearing. There is no evidence that he ever contacted the creditor for the tuition account. Despite believing that his ex-wife may have opened these accounts without his consent (the evidence is equivocal on this issue), he did not dispute the account with the creditor or the credit reporting agencies. He also has not taken any legal action against his ex-wife and did not attempt to have the loans assigned to her during his divorce proceeding. Finally, he further indebted himself in 2022 by taking out a \$6,000 loan to go on vacation. AG ¶ 20(b) does not apply.

Applicant's 2020 attempt to address his federal student loans with a rehabilitation agreement and two \$5 per month payments prior to the COVID-19 deferral is of some mitigative value under AG ¶ 20(d). However, he did nothing to attempt to resolve these student loans prior to then and did nothing else until after the hearing. He has also not provided any evidence of his attempt to resolve the college tuition debt. AG ¶ 20(d) minimally applies.

Applicant claimed that he does not believe he owes some of the SOR debts because he assumes his ex-wife opened those accounts without his consent. If true, this lack of consent could be a reasonable basis to dispute the legitimacy of these accounts. However, the underlying evidence of this alleged fraud is equivocal, and he does not meet his burden of persuasion to prove it. He acknowledged that he signed loan documents that could have constituted his authorization to open those accounts. He also acknowledged that he did not read what he signed and that he did not keep track of his finances because he allowed his ex-wife to do so.

Moreover, for AG ¶ 20(e) to apply, Applicant must either provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue. The text messages he provided did not do so because they show that he claimed his ex-wife opened the student loan accounts without his consent, but she denied this and claimed they both authorized the loans. Other than arguing with his ex-wife to no avail, he has not provided evidence of actions to resolve the issue. He did not

dispute the account with the creditor or the credit reporting agencies. He did not provide evidence that he contacted the police, filed a civil suit, or raised the issue as part of his divorce proceeding. Finally, while the SOR accounts no longer show being delinquent in one portion of the Government's 2023 credit report, there is no evidence that this change reflects a positive resolution of those accounts. On the contrary, he did not know why they are listed as no longer being in collections. AG ¶ 20(e) does not apply. He has not provided sufficient mitigating evidence.

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 have incorporated my comments under Guideline F in my whole-person analysis. I have also considered Applicant's honorable military service and his positive character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.s:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge