



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-02581
)
Applicant for Security Clearance)

Appearances

For Government: Jenny G. Bayer, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

06/30/2023

Decision

MASON, Paul J., Administrative Judge:

Applicant knew when he stopped making payments on the two delinquent student loan accounts in 2016, that they would become delinquent, notwithstanding his unclear views of the charged-off status of the accounts. His primary reason for not addressing the debt was that, even though he considered his credit would suffer from his failure to address the charged off debts, his credit status would eventually recover. Based on the documented evidence showing: (1) that he restored the two listed debts to a rehabilitative status in June 2022; (2) that he has maintained regular monthly payments on an unalleged student loan account since 2019; and (3) that he has a favorable job performance reputation, Applicant has overcome the security concerns remaining under the financial considerations guideline. Eligibility for security clearance access is granted.

Statement of the Case

On April 16, 2018, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for security clearance eligibility so that he could work for a defense contractor. In September 2021, he provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). Reference to

that PSI appears at pages 56 and 57 of the transcript (Tr.) On January 20, 2022, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the necessary affirmative finding to grant Applicant's security clearance and issued a Statement of Reasons (SOR) to him detailing security reasons under the financial considerations guideline (Guideline F). The action was taken under the DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

On March 7, 2022, Applicant provided an answer denying the two allegations of the SOR without explanations. A notice of hearing was issued on March 23, 2023 for an April 12, 2023 hearing. The hearing was held by Microsoft Teams as scheduled.

The Government's three exhibits were entered into evidence without objection. Applicant presented no exhibits. He testified. After the hearing, the record remained open until April 20, 2023 for Applicant to submit post-hearing exhibits. Attached to an email dated April 20, 2023, he submitted six post-hearing exhibits. Because Applicant sent the exhibits to the wrong email address, I did not receive the exhibits until May 25, 2023. With no objection to the exhibits, they were admitted into evidence. The transcript in this case was received on May 1, 2023. The record in this case closed on May 25, 2023.

Findings of Fact

The SOR contains two delinquent Department of Education (DOE) student loan accounts in collection, totaling \$109,663. The accounts were opened in 2016 and became delinquent in December 2018.

Applicant is 45 years old, single, and has never been married. He has no children. After five years of college, he received a bachelor's degree in education in 2001. He collected several college credits from August 2006 to June 2008, and from August to October 2012, but received no degree. (Tr. 6-7) In 2015, Applicant received a digital marketing certificate and a web development certificate in 2019. (GE 1 at 11; Tr. 5-6) He applied and received approximately \$69,134 in seven student loans between 2005 and February 2008 to finance his education. (GE 2 at 4-7). In June 2016, six of the student loans were apparently assigned to the DOE (GE 2 at 5; GE 3 at 2), and are alleged in SOR ¶¶ 1.a and 1b as collection accounts.

Applicant has been continuously employed since January 2016 as a program analyst with three different contractors. His professional career before and during his current job includes working as a short-sale realty negotiator from October 2015 to April 2018. Before the realty job, Applicant was unemployed for about three months from August 2015 to October 2015, when the contract for a job Applicant was scheduled to begin was abruptly eliminated. From July 2001 to August 2015, he was a teacher and a part-time mentor from November 2009 to October 2010. (GE 1 at 13-18; Tr. 39-40) Though he denied in his April 2018 security clearance application that he had a security

clearance, he testified that he has held a security clearance since 2016. He has no prior military history. (GE 1 at 13 -19, 31; Tr. 7)

Reasons for Delinquent Student Loans

In January 2012, Applicant had neck surgery and his medical bills began to mount over the next three years until they reached their highest level in 2015. In 2013, his growing indebtedness motivated him to enroll in financial counseling, which lasted about a year. His financial difficulties in 2014 resulted in a collection agency garnishing his wages for one account which he settled in January 2016. Applicant recalled his rising debt in 2015 was exacerbated by his inability to keep his mortgage payments current and caused him to exhaust his savings account. (Tr. 28-31, 34-37)

In January 2016, Applicant started working as a program analyst on a temporary basis with a previous contractor-employer of his current contractor-employer. (GE 1 at 13; Tr. 40-43) He also started other part-time jobs in information technology (IT) and web site development in September 2016 and worked in those positions through April 2018. Then, he moved out of his relative's home into an apartment with a roommate. (GE 1 at 13-19; Tr. 41-44)

After the temporary job as program analyst became permanent in 2017, he began to fix his credit history by prioritizing his debt payments by addressing his medical bills first, then student loans, then credit-card debt. Though his testimony is confusing during his description of when the student loans became delinquent, he suspected that he defaulted on his student loans in 2016, because that is when the (listed) loans were charged off, though he did not know about the charge off until 2021. (Tr. 38-39, 53) Applicant examined the meaning of "charged off," "and I thought it was just going to be a hit on my credit because it – because when I looked at my credit score, like the debts were no longer there." (Tr. 31, 53) In other words, Applicant concluded that it would damage his credit, but he would recover.

When he moved into his own rental in 2019, he changed his address with the post office and he was contacted and paying all the other creditors that he owed except for two the DOE student loan accounts. Applicant interpreted the lack of contact from the DOE as an additional reason that the accounts were charged off. He indicated that he had documentation to verify he had been consistently paying another student loan servicer throughout the COVID-pandemic in 2020 and 2021. The Government credit reports show that Applicant maintained regular payments with another student loan servicer from 2019 to March 2022. (GE 2 at 4; GE 3 at 8). Applicant's April 17, 2023 personal financial statement (PFS) shows that he was paying \$199 monthly on the student loan he testified about. (GE 2, GE 3; Tr. 28-32, 34-37, 49; AE C) The two student loans reappeared in his 2020 or 2021 credit report as delinquent. (Tr. 39, 51)

Applicant's testimonial responses to the delinquent status of the two DOE accounts became clear: (1) when he replied that he was aware that the two loans became delinquent when he stopped making payments on them around 2017; (2) when

he replied that he had not been paying on the two loan accounts for years; and (3) when he conceded that he had not contacted the DOE about the loans for several years. (Tr. 54-55)

In September 2021, Applicant provided a PSI to an investigator from OPM. He recalled discussing his financial troubles he was having in 2015, but he did not recall conversing about the two DOE student loan accounts. (Tr. 56-57)

I find no earlier testimonial support for Applicant's claim that he initiated contact with the DOE in January 2021. (Tr. 58) Rather, he testified that toward the end of 2021, he initiated the process of rehabilitating the two DOE loans by asking the DOE what he needed to do to activate the rehabilitation process. (Tr. 52) He began by submitting a personal financial statement (PFS) to the agency addressing all his earnings and financial obligations. (Tr. 55) In February 2022, the DOE offered him a payment plan which called for two months of payments. Applicant provided documentation confirming that on June 21, 2022, the DOE notified him that he had successfully rehabilitated the two defaulted student loan accounts. (Tr. 55-57; AE A) Applicant claimed that after he sold his house in 2021, he applied some of the \$70,000 profit to the two listed student loans. While he indicated he could provide documentary proof of payments (Tr. 45, 58), none was provided.

Applicant's father passed away in March 2020. He moved from his apartment in the local area to his father's home in another location of the state to assist his youngest sister finish high school and prepare for college. For an unknown period of time, he continued to pay the rent on his apartment and the mortgage on his father's home. Currently, he only pays the mortgage and has a monthly remainder of approximately \$2,160 after payment of his expenses. He is current on the two listed student loans. Following the two student loan payments that he made in 2022 to rehabilitate the listed loans, he has made no payments since then because of the Government payment pause due to the COVID-pandemic. The pause will not be lifted until at least June 30, 2023, or a statutorily defined date thereafter. Applicant will pay \$529 and an additional amount of \$222 a month until 2052. (Tr. 59-61; AE A, B, C, F)

Applicant testified that he has a written budget that he maintains on a regular basis. He formulates the budget on a computer spreadsheet that he has had for three years. He was advised to send that budget in with his other post-hearing submissions. He submitted a personal financial statement (PFS) on February 17, 2023. (AE C) The Government credit bureau reports show no additional delinquent debts except for those listed in the SOR. (GE A, GE B)

Character Evidence

Applicant submitted two character statements. The president of the company has known Applicant since 2020. The president does not supervise his work, but receives regular and favorable reviews about Applicant from his direct supervisor and the customer. Applicant is a valuable member of the team he works with. He was

nominated as employee of the third quarter of 2021. The president considers Applicant's delinquent student loans to be an aberration to his responsible behavior. The president believes that Applicant should be granted a security clearance. (AE D)

An administrative officer (AO) who has worked in the Navy for 40 years, and holds a security clearance, manages human resources and personnel matters. She has known Applicant professionally since 2017. She has worked with him on several financial tracking assignments. Applicant is known for his attention to detail and security consciousness. The AO is not familiar with the allegations in the SOR. She is aware that after his father passed, Applicant moved into his father's home to assist his younger sister finish high school and prepare for college in the fall of 2023. The AO believes Applicant warrants a security clearance. (AE D)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines and all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. These guidelines, which are flexible rules of law, are applied together with common sense and the general factors of the whole-person concept. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel. . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Financial Considerations

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.

A person's practice of paying his voluntarily incurred debts is a private matter until evidence reveals that he is not paying his debts in a timely fashion. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government's credit reports establish that the two student loan debts listed in the SOR became delinquent in 2018. The total amount of debt posted in the SOR is \$109,663.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

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

The two listed student loans were opened in 2016 and became delinquent in December 2018. Though the pause by the DOE in June 2022 has qualified the loans for rehabilitation, over three years passed without any documented action by Applicant to rectify the delinquent accounts. The lack of action to address the loans demonstrates a failure to meet and satisfy debts in a responsible manner. AB ¶¶ 19(a) and 19 (c) apply.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's receives only limited mitigation under AG ¶ 20(a). Though there are only two delinquent student loan debts, they became delinquent in 2018, and he still owes more than \$109,000, after subtracting his two payments to rehabilitate the accounts in June 2022.

AG ¶ 20(b) offers little mitigation to Applicant. Following his unemployment for three months in 2015, he has been steadily employed since January 2016. However, he admitted that he was aware that he had defaulted on the student loans when he stopped paying them at some time in 2016. While he stressed that he did not discover that the loans were delinquent until late 2021, he knew or should have known much earlier that the two debts became delinquent after he stopped making payments. Accordingly, he should have contacted the DOE to investigate the status of the accounts and begin to address them, or at least keep the Government agency aware of why he has unable to handle the delinquencies.

Applicant receives some mitigation under AG ¶¶ 20(c) and 20(d) for participating in financial counseling in 2013. Apparently, the year-long counseling helped him to prioritize his financial obligations by addressing his medical debts first, then his student loan debts, then his credit debts. I am unable to give much weight to Applicant's PFS since it is not a budget and is dated five days after the hearing. Though he was aware the listed student loans had gone into default in 2018, he did not act on the debt until late 2021. Even though his repayment of the two student loan debts is in a payment-pause, Applicant should realize that if he misses a payment along the current payment schedule, the two loans will return to a delinquent status, locking him out of another chance to rehabilitate the loans.

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 45 years old. He has been working as a program analyst since January 2016. His favorable job performance and security consciousness are

corroborated by the president of his employer and AO of the user agency. After his father passed in March 2020, Applicant moved into his father's house to mentor his youngest sister in reaching her goal of graduating from high school and college. Applicant exercised poor judgment in letting his student loans become delinquent in December 2018. Once he received notification that the loans were delinquent at the end of 2021, he took action to rehabilitate the loans. After two payments of \$529, the DOE notified him on June 21, 2022 that the loans were rehabilitated. Given the favorable character evidence regarding Applicant's job performance and his respect for safeguarding classified information, he has successfully mitigated the security concerns raised by the guideline for financial considerations.

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.b:	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 access to classified information. Applicant's application for a security clearance is granted.

Paul J. Mason
Administrative Judge