



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



In the matter of:)
)
) ISCR Case No. 23-01405
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On August 8, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on August 29, 2023, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on October 4, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 1, 2023. He did not respond. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He has worked for his current employer since May 2021. He worked for a different federal contractor from 2012 to May 2021. He served in the U.S. military from 1988 until he was honorably discharged in 2008. He is married with two adult children. (Item 3)

Applicant cosigned a student loan from a credit union with his daughter in 2012. The understanding was that she would make the payments. As a cosigner, Applicant is legally responsible for the loan if his daughter does not pay it. Nobody maintained payments on the loan. The last payment was reported as made in September 2020, and the credit union charged off \$95,126. Credit reports indicate that the balance on the account was \$102,145 in October 2022; \$104,056 in February 2023; and \$107,590 in October 2023. (Items 6-8)

Applicant was interviewed for his background investigation in December 2022. He told the investigator that he was unaware of the status of the student loan until he talked to his daughter the day before the interview. He daughter had an inconsistent payment history because of her low income. He said that his daughter was attempting to contact the collection company for the loan to set up a payment plan. He stated that he planned to pay his daughter \$300 per month as assistance in paying the loan. He could afford that amount because he was half beneficiary of his recently deceased sibling's retirement, which he expected to be \$125,000. He did not plan to contact the credit union or the collection company directly, as he allowed his daughter to handle it. (Item 4)

When Applicant responded to interrogatories in June 2023, he wrote that his daughter "has had problems trying to get ahold of them to work something out. She is trying." He wrote that no one came after him, and all his other bills were being taken care of. (Item 4)

Applicant denied owing the defaulted student loan in his response to the SOR. He wrote:

As per my Credit Karma account, that debt has been closed and is no longer shown on my debt owed. There are also no current collections against me. My current score is 689. This is not the score of someone in financial distress. This should not be held against me. Thank you.

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:

- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant cosigned a student loan from a credit union with his daughter in 2012. The understanding was that she would make the payments. As a cosigner, Applicant is legally and morally responsible for the loan if his daughter does not pay it. She did not pay it, and Applicant has chosen not to pay it. AG ¶¶ 19(b) and 19(c) are applicable.

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;
- (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;

(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.

Applicant's position is that the account has been closed and may no longer be on his credit report. The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) and ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015). Additionally, the debt is listed on the most recent credit report in evidence. In any regard, as a cosigner, he is ultimately responsible for the loan to the same extent as his daughter, and he abrogated his responsibility to pay the loan.

There is insufficient evidence for a determination that the defaulted student loan will be resolved within a reasonable period. I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay the loan. His decision to ignore a loan that is his responsibility as cosigner casts doubt on his reliability, trustworthiness, and good judgment. None of the financial considerations mitigating conditions are applicable.

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 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. I also considered Applicant's honorable military service.

