



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



In the matter of:)
)
) ISCR Case No. 23-01427
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 28, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

In an undated answer to the SOR, Applicant elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on October 13, 2023. He was afforded an opportunity to file objections and submit material in refutation, extenuation,

or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5. (Item 1 is the SOR) Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on January 30, 2024.

Findings of Fact

Applicant admitted both SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. In his November 2022 security clearance application (SCA), he disclosed that he began attending college in 2011 and has continued to the present. In 2016, he earned an associate degree. He is working towards a bachelor's degree. He has worked for a federal contractor since 2022. He has not married and has no children. (Item 2)

The SOR alleges two delinquent accounts to the same creditor (SOR ¶¶ 1.a - \$22,616 and 1.b - \$12,609). A December 2022 credit bureau report reflects both debts' last activity and report dates were November 2022, and their status is charged off. (Item 5)

In January 2023, Applicant was interviewed by a government investigator. He acknowledged these accounts were for private student loans from a financial institution. He said he was unaware they were in collection because his mother was paying them, and he did not know what led up to the financial issues. (Item 3)

Applicant completed government interrogatories in April 2023. He was asked about the status of the two alleged debts. He indicated they were not paid, but payment arrangements were made and payments were being made, respectively, as to each of the two debts. In his response, he said that he did not include any supporting documentation with his interrogatories. He stated: "Both of those were payments for a student loan for college that was transferred to my mother's account, currently she is paying for the loan on her account." He further stated that when he first started college, he did not sign up for Free Application for Federal Student Aid (FAFSA). He said: "[S]o I had decided to take a loan from [credit union] with my mom and currently it is being paid under her account." Applicant has not provided any supporting documents that the loans are not his responsibility, have been transferred to his mother, and are being paid. He has since obtained additional student loans through FAFSA. (Item 4)

In Applicant's response to the SOR, he admitted both debts and stated:

Both of those are from my tuition for [college] which should from my understanding was transferred over to my mother's account to be paid for under her [credit union] account. (Item 2)

Applicant did not provide any documents to show these debts do not belong to him and are now the responsibility of his mother. A personal financial statement was provided. It reflects that Applicant's current annual salary is \$56,622. He does not list any payments being made for these loans. He has approximately \$2,208 net remainder each month.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has two loans that are delinquent and were charged off in November 2022. Despite admitting the loans belong to him and being aware of their delinquent status, he has not provided evidence that he is not responsible for their repayment. Applicant has sufficient remaining income to begin addressing them but has not. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 had 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 action to resolve the issue.

Applicant admitted the two delinquent loans alleged in the SOR belong to him. However, he also has repeatedly stated that his mother assumed responsibility for repayment, yet failed to provide any tangible evidence that he is no longer required to pay them. He was asked to provide documentation in his interrogatories and again was told in the FORM that he should provide it but failed to do so. Presumably, he could ask his mother whether she is paying the loans and provide substantiation from her. He has not.

Applicant's delinquent debts are recent and did not occur under unique circumstances that are unlikely to recur. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. There is no evidence his financial problems were beyond his control. There is no evidence he sought financial counseling or made a good-faith effort to repay his loans. He has not presented evidence of a legitimate dispute. None of the mitigating conditions 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 the 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.

Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge