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DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
))
) ISCR Case No. 22-01496
))
Applicant for Security Clearance)

Appearances

For Government: John Hannink, Esq., Department Counsel
For Applicant: *Pro se*

06/12/2024

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 28, 2021. On September 14, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). DOD 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 the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR in October 2022 (SOR answer), admitting all eleven allegations and providing brief amplifying information in a written response. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The SOR and Applicant’s answer are the pleadings in the case.

The case was assigned to me on May 9, 2023. On August 17, 2023, DOHA issued a notice scheduling the hearing for September 7, 2023. Prior to the hearing, the Government provided seven exhibits (GE 1–7). Applicant provided none.

The hearing convened as scheduled. GE 1-7 were admitted into evidence without objection. The record was left open until September 22, 2023, to allow the parties to submit additional documentation. Department Counsel submitted seven additional administrative exhibits that were marked as Hearing Exhibits (HE) 1 – 7. Applicant did not submit any additional material and did not object to the Hearing Exhibits. DOHA received the hearing transcript (Tr.) on September 18, 2023.

Findings of Fact

Applicant admitted all of the SOR allegations with brief explanations. His admissions are included in the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is 34 years old. He has worked for a defense contractor since May 2021. Though he stated he started with the contractor in September of 2021 or 2022, his SCA is dated June 2021 and his application for a clearance is based on that pending position. Therefore, May 2021, which was also contemporaneous with his SCA, is more likely. He is applying for his first security clearance. Applicant states he is four credits short of his associate degree. He is single with one minor child, who does not reside with him. (Tr. 25-28, 36-40, GE1)

The SOR alleges 11 debts placed for collection or past due totaling approximately \$16,711 of which 7 (SOR ¶¶ 1.a – 1.d, 1.f – 1.g, and 1.k) totaling \$15,060 are student loans. The loan in SOR ¶ 1.k appears to be directly from the school. (SOR; GE 2, 3, 4, and 6)

Applicant enrolled in an associate degree program at a local college in 2016. He did not complete the program and states he is four credit hours short of his associate degree. In Section 26 of his SCA, he stated the “only debt I have is school loans and im [sic] currently working on a way to get it situated.” During his background interview on August 4, 2021, when asked about debts, he again stated he only had the student loans and that he was currently working on them. He also mentioned to the investigator that he had been notified about a recent debt for a department store credit card for \$231. (SOR ¶ 1.j)

Applicant stated he was unaware of total loan amounts until the OPM investigator provided them during his interview. During his hearing, he also stated he thought he had received some grants, “so it paid for every semester and I didn’t have to pay anything And then I ended up seeing bills that I owe this much and that much.” He stated he submitted disputes but had heard nothing. He did not believe he still had any paperwork to support the initial grants. (Tr. at 40-56; GE 1 at 23; GE 4; GE 7 at 5)

Applicant stated he had consolidated, or was attempting to consolidate, the student loans in SOR ¶¶ 1.a – 1.d and 1.f – 1.g. He stated he did not currently have the paperwork confirming the consolidation but thought he should be able to find the emails confirming this and provide them. At the hearing, he stated he had begun payments of approximately \$200 per month in September 2022. Again, he averred he would be able to provide the confirmation emails. (SOR Answer; GE 4 at 1-3; Tr. at 57-60)

Though Applicant failed to submit any documentation to support his statements at his hearing, the October 2022 and August 2023 credit bureau reports (CBRs) seem to support his assertions regarding student loan consolidation. His August 2023 CBR has a large student loan that, by the amount (\$14,603), appears to be a consolidated student loan. It was opened in June 2022, was in good standing and showed payments beginning in May 2023. However, the August 2023 CBR also shows five U.S. Department of Education accounts listed as “collection account (Enhanced Trade Only),” one with a balance remaining of \$2,567. A sixth U.S. Department of Education account (\$3,717) is listed as at least 120 days past due. It is unclear whether the student loans alleged in SOR ¶¶ 1.a – 1.d, 1.f – 1.g, and 1.k, are resolved. (GE 5 at 5-7; GE 6 at 3-7)

Post-hearing and before the record closed, the Government submitted administrative exhibits regarding the settlement in *Sweet v. Cardona*, No. 3:19-cv-3674 (N.D. Cal. (2022)), a class action settlement between the Department of Education and members of the class. The agreement affects the processing of U.S. Department of Education student loan borrowers who filed borrower defense applications on or before June 22, 2022. The school Applicant took out his loans to attend is one of the named schools. I take administrative notice that Applicant’s university was listed in the case and that the time frame the class action covered includes the time period Applicant took his classes. When questioned during the hearing, Applicant stated he had not heard about the class action. He was unsure whether he had been notified and stated he would have to check his e-mail. Applicant did state he had applied for one of the student loan deferment programs but, again, provided no documentation and was unsure what program that might have been. (Tr. at 69-71)

Applicant stated he let the consumer debt alleged in SOR ¶ 1.e (\$1,000) slide when he began to focus on the student loans. This was a credit account to help pay bills with his mother. In his SOR answer he stated it was paid but at the hearing said he was making sporadic payments. This debt does not appear on Applicant’s August 2023 CBR. It was charged off in 2022. Applicant stated he would have emails to indicate its status and his payment history. This debt appears to be resolved. (Tr. at 46-47; GE 2 at 3; GE 3 at 5; GE 4 at 3; GE 5 at 6; GE 6)

The debt alleged in SOR ¶ 1.h (\$271) was the result of an insurance dispute. Applicant stated he had just paid this shortly before the hearing. He also stated it was paid in his answer to the DOD interrogatories. He had no current documentation but stated he should have emails to support it. He did not know why he did not bring his emails. He credibly testified he had paid this debt. It does not appear on his October 2022 or August 2023 CBRs. This debt is resolved. (Tr. at 46-51; GE 2 at 3; GE 3 at 5; GE 4 at 3; GE 5; GE 6)

The debt alleged in SOR ¶ 1.i (\$149) was from a consumer debt. Applicant stated in his answer to the DOD interrogatories that it was not paid. In his answer to the SOR, he stated it was paid. He had no current documentation but should have emails to support it. He credibly testified he had paid this debt. It does not appear on his October 2022 or August 2023 CBRs. This debt is resolved. (Tr. at 51; GE 2 at 3; GE 3 at 5; GE 4 at 4; GE 5; GE 6)

Applicant volunteered the consumer debt alleged in SOR ¶ 1.j (\$231) during his ESI. Applicant stated in his answer to the CAS interrogatories that it was paid. In his answer to the SOR, he stated it was paid. He had no current documentation but should have emails to support it. He credibly testified he had paid this debt. It does not appear on his October 2022 or August 2023 CBRs. This debt is resolved. (Tr. at 51-52; GE 3 at 5; GE 4 at 4; GE 5; GE 6; GE 7 at 6)

Applicant did not fill out the income balance sheet attached to the CAS's interrogatories but stated at his hearing his income was approximately \$62,000 annually at the contractor who is sponsoring him for his clearance, but without the clearance, he is making less currently, having returned to his old job while waiting on this process. Applicant does have several installment and revolving accounts that are in good standing and paid on time. He took out a loan for \$54,000 to purchase a used car. He stated he thinks he made a \$2,000 down payment from his savings to purchase the car. This loan is in good standing. He stated he thinks his payments are about \$700 per month. The October 2022 and August 2023 CBRs indicate the payment is \$999 per month. It has always been paid on time. (Tr. at 38, 76-79; GE 4; GE 5 at 3; GE 6 at 4)

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 has a history of financial problems, including delinquent debts and defaulted student loans. While mostly small, he was not aware of some of his debts and was unaware of the amounts of others. Applicant was given multiple opportunities to provide supporting documentation (i.e., SOR answer, answer to interrogatories, at his hearing, and while the record remained open after the hearing) and failed to provide anything. Applicant stated he was only able to pay certain debts based on his income but had taken no action regarding his debts prior to being notified by the OPM investigator that his debts may be a concern. The evidence is sufficient to raise the above disqualifying conditions.

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.

Applicant's student loans remain unpaid, though at least some may be in consolidation and repayment. He appears to have paid off the smaller debts but provided no documentation. AG ¶ 20(a) does not apply as some of his indebtedness continues and is, therefore, recent.

It is possible Applicant's student loans were the result of some level of predatory behavior based on the *Sweet v. Cardona* settlement. However, Applicant states he is not a member of the class and had not applied for relief and provided no documentation or statements to indicate this was the case. Even though aware of the loan indebtedness as indicated by his answer in his SCA and his interview, he was unaware of the amount he owed and had taken no action on these loans until he was aware it was a security concern. Therefore, AG ¶ 20(b) does not apply as applicant has not met the second part

of the test (that he acted responsibly under the circumstances) even if the first part is met. AG ¶ 20(e) does not apply as it is unclear whether Applicant has a reasonable basis to dispute his student loans and, even if he does, he failed to provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue.

Applicant stated he paid off his smaller debts. Though he provided no supporting documentation, his October 2022 and August 2023 CBRs seem to support this. The Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). On the whole, however, regarding the debts alleged in SOR ¶¶ 1.e, and 1.h – 1.k, I find AG ¶ 20(c) applies. The allegations are mitigated.

Applicant stated he plans to pay all of his debts, including his student loans. However, intentions to resolve debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). Based on Applicant’s credible testimony and what appears to have been positive action, I believe with time he will likely establish a track record that could lead to a different result. But that time has not quite yet arrived.

While Applicant appears to be on the right track, there is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. Though aware of his debts, he took no action to resolve them until on notice they were of a concern. Should Applicant continue to handle his debts in the manner he appears to be doing now, he will likely establish a record of good judgment. At this time, however, his failure to provide any supporting documentation at any point in this process coupled with his failure to take action sooner to resolve his debts, continues to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant’s delinquent debts regarding his student loans are not mitigated.

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.

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.

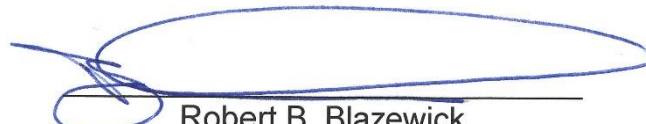
Formal Findings

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraphs 1.h-1.k:	For 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.


Robert B. Blazewick
Chief Administrative Judge