



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



In the matter of:)	
)	
)	ISCR Case No. 22-02335
)	
Applicant for Security Clearance)	

Appearances

For Government: John Hannick, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

08/29/2024

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. After the death of his mother, Applicant, in his grief, ignored his finances. After receiving the Statement of Reasons (SOR), he took the necessary steps to address his delinquent accounts. Clearance is granted.

Statement of the Case

On December 7, 2022, the DOD issued a statement of reasons (SOR) detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be

submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to grant his security clearance. Applicant timely answered the SOR and requested a hearing.

At the hearing, convened on December 12, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated March 14, 2023. I admitted Government's Exhibits (GE) 1 through 8, and Applicant's Exhibit (AE) A through X without objection. After the hearing, I left the record open until January 12, 2024, to allow Applicant to submit additional documentation. He submitted two documents which are admitted to the record, without comment from Department Counsel (HE III), as follows:

AE Y: Student Loan Payment, dated December 6, 2023 (1 page); and

AE Z: Student Loan History from 2015 – 2020 (2 pages).

DOHA received the hearing transcript (Tr.) on February 16, 2024, and the record closed.

Procedural Matters

SOR ¶¶ 1.c through 1.u allege Applicant's federal student loans were delinquent as of the date of the SOR, December 7, 2022. However, as of the date of the SOR, the alleged student loans were in administrative forbearance under the 2020 CARES Act. At the hearing, I expressed my intent to amend the SOR to accurately reflect the Government's concern about the loan. (Tr. 8-9) On December 12, 2023, Department Counsel proposed the following language:

You are indebted to the [creditor] for account # [xxxxxxx] placed for collection in the amount of \$[xx.xx] for a student loan that was delinquent prior to being placed into a forbearance status as a result of the Covid-19 deferment. (HE II)

Applicant's counsel did not offer any input or objection to the proposed language. SOR ¶¶ 1.c through 1.u are amended as indicated above.

Findings of Fact

Applicant, 41, has worked for his employer, a federal contracting company since July 2009 as a cyber security professional. He was initially granted access to classified information at an unspecified time in the past. He completed his most recent security clearance application on August 23, 2021. He did not disclose any derogatory information. The ensuing investigation revealed Applicant had two delinquent consumer accounts, totaling \$8,101, and 19 federal student loans, totaling \$127,098 with a date of last payment of December 2016. (GE 4) These debts are alleged in the SOR. (Tr. 24-25; GE 1, 4; Answer Exhibit (Ans Ex) L)

Applicant served in the United States Air Force (USAF) from December 2003 to April 2005; the Air National Guard from April 2005 to May 2006; the Army National Guard from May 2006 to April 2009; and the USAF Inactive Reserve until September 2011. After completing his military service, he began pursuing higher education. He earned a bachelor's degree in December 2011, and a master's degree in November 2013. He financed his education with the federal student loans alleged in SOR ¶¶ 1.c through 1.u. (Tr. 18-24, 31, 40-42; GE 1; Ans Ex. J)

Applicant started a second master's degree but put his studies on pause to care for his terminally ill mother. To provide support to his parents, Applicant, his wife, and daughter moved in with his parents. After his mother died in December 2015, Applicant did not process his grief. He testified he checked out for the next few years, focusing on supporting his father and his work. He was aware his student loans were in repayment status; however, his wife handled the family finances, and he did not pay attention to them. He testified he neglected his family and his financial obligations. (Tr. 46, 49-50, 57-58; GE 1; AE E)

In late 2022, Applicant's family moved from State 1 to State 2. The day before they listed their home in State 1 for sale, they experienced a plumbing issue in the home that resulted in significant water damage. They also experienced significant water damage and HVAC issues at their new home in State 2. He used consumer credit to pay for the supplies needed for the repairs. (Tr. 344-37; AE I-X)

Applicant claims that receiving the SOR in December 2022 brought his attention back to his finances. He resolved the debts alleged in SOR ¶¶ 1.a and 1.b in January 2023. Also in January 2023, he enrolled in the Fresh Start Program, a loan rehabilitation offered by the Department of Education to assist delinquent borrowers return their loans to good standing after the payment pause expired. His new loan payment will be \$1,800, which he has accounted for in his budget and can comfortably afford. He made a good-faith payment toward his student loans in December 2022. (Tr. 16-18, 32-33, 39, 49,56; GE 3; AE B-D, Y-Z; Ans Ex. A-D)

Aside from the debts alleged in the SOR, Applicant's other consumer credit accounts are in good standing. (Tr. 5-62; GE 3)

Policies

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(a), 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.

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

Failure to meet one’s 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. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18) The record establishes the Government’s *prima facie* case that Applicant owed two delinquent consumer accounts, totaling \$8,101 and 19 federal student loans, totaling \$127,098.

The following financial considerations disqualifying condition applies:

AG ¶ 19(a) an inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

Applicant incurred delinquent debt in the years following his mother's December 2015 death, an event beyond his control. In his grief, he did not pay attention to his finances. Given the length of time he left his finances unattended, his actions to resolve his delinquent account cannot be considered as acting responsibly under the circumstances. As a result, AG ¶ 20(b) partially applies. However, his actions merit the application of AG ¶ 20(d), "the individual initiated and is adhering to a good faith-effort to repay his creditors or otherwise resolve debts." After receiving the SOR, he has made a good-faith effort to repay his creditors. He resolved the accounts alleged in SOR ¶¶ 1.a and 1.b in January 2023. He has also taken advantage of the Fresh Start Program to rehabilitate his delinquent student loans. His actions are sufficient mitigate the financial concerns alleged in the SOR.

Based on the record, I have no doubts regarding Applicant's suitability for access to classified information. In reaching this conclusion, I also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt collection proceedings. Rather the purpose of the adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." Furthermore, applicants are not held to a standard of perfection. Applicant experienced emotional difficulties in the aftermath of his mother's death. Grief is not linear. An individual cannot control their grief response or how long its effect may linger. Applicant responded appropriately to SOR and addressed the Government's concerns. He is otherwise financially healthy and there are no other security concerns related to his finances.

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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.u:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant's eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge