



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



In the matter of:)	
)	
)	ISCR Case No. 12-07099
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

04/13/2015

Decision

DAM, Shari, Administrative Judge:

Applicant allegedly owed eight delinquent debts totaling \$119,306, five of which were student loans for himself and his wife. Applicant provided proof that he began repaying his delinquent student loans in early 2014. His wife’s student loans, which he cosigned, total \$34,054. They became delinquent in 2009 and remain unresolved except that two SOR allegations concern just one of them. Between 2009 and 2011, he invested over \$43,000 in a personal business that failed. Financial security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 1, 2012, Applicant submitted a security clearance application (SCA) for re-investigation. On August 25, 2014, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On September 19, 2014, Applicant answered the SOR (Answer), and requested a hearing. On November 24, 2014, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On January 2, 2015, DOHA issued a hearing notice, setting the case for January 22, 2015. The hearing was held as scheduled. At the hearing, Department Counsel offered five exhibits (GE) and Applicant offered six exhibits (AE) into evidence. (GE 1-5; AE 1-6.) All were admitted. DOHA received the hearing transcript (Tr.) on February 3, 2015; and I received it on February 23, 2015. The record remained open until February 13, 2015, to give Applicant an opportunity to submit additional information. That deadline was extended to March 6, 2015, without objection by Department Counsel. Applicant timely submitted AE 7 through 10, which I admitted into the record without objection from Department Counsel.

Findings of Fact

Applicant admitted the allegations listed in SOR ¶¶ 1.a and 1.b. He denied the allegations listed in SOR ¶¶ 1.c through 1.h, and offered explanations. His admissions are accepted as factual findings.

Applicant is a 40-year-old employee of a defense contractor. He and his wife have been married for 13 years. They do not have children. He has a bachelor's and a master's degree. He has worked for his employer since 2001 and held a security clearance since 2002. (GE 1.) His performance evaluations rate him as meeting or exceeding expectations. (Tr. 17-20.) He has held a secret security clearance since 2002. (GE 1.) Both Applicant and his wife obtained student loans to attend college. Applicant co-signed for his wife's loans. His wife graduated in 2008 with a bachelor's degree. She worked briefly after graduation, but has not worked since. (Tr. 20-22, 39.)

A government investigator interviewed Applicant on March 23, 2012. They discussed Applicant's delinquent debts, including those listed in his SCA. Applicant noted that his wife's student loans were with a collection agency and that they had not started repaying the loans totaling \$34,000. He said he intended to repay them in the future, after he completed car payments in 2013 and another debt. He noted that he had "invested very heavily of our personal income in starting [a] business: estimated around \$43,000 from 2009 to 2011. This has caused us to fall behind on many of our personal accounts." (GE 1.)

During the same interview on March 23, 2012, Applicant stated that his wife's student loans were in forbearance from October 2008 until April 2009, after which they became due. One of his loans was in forbearance at the time of this interview, but was 60 days past due. He said that he intended to have the student loans, totaling \$110,000, paid by 2042. (GE 1.) In a March 17, 2014 response to a subsequent inquiry from the

government about the status of his student loans, he indicated that he negotiated a repayment plan and that his first scheduled payment was made on February 28, 2014. According to the creditor, that payment was received on March 1, 2014. He acknowledged that no action was taken on his wife's loans. (GE 1; AE 8, AE 9.)

During his testimony, Applicant again explained the financial effect that starting an import business had on his finances. He admitted that using approximately \$43,000 of personal monies to fund the business caused him financial difficulties. As a consequence they were unable to make payments on student loans, a mortgage, and other expenses. (Tr. 27, 28.) He and his wife continued operating the business into early 2014, trying to make it successful. It is closed now. (Tr. 37-38.) His wife also ran for a state office position and they spent \$3,000 to \$4,000 on the unsuccessful campaign. (Tr. 43.) His mortgage and monthly home expenses are now current. (Tr. 36.)

Based on credit bureau reports (CBR), dated March 2012; December 2014; and July 2014, the SOR alleged eight delinquent debts that total \$119,306. Five of these debts are student loans, which became delinquent between 2008 and 2014. (GE 3, GE 4, GE 5.) The status of each debt is as follows:

SOR ¶¶ 1.a and 1.b (\$19,481 and \$14,573): Both of these debts are owed to creditors for Applicant's wife's student loans. They became delinquent in 2009 and total \$34,054. Since 2011 he made one or two payments on the loans. The last time he contacted the creditor was a year ago to discuss a payment plan, but they would not arrange a plan he could afford. He intends to resolve the loans when money becomes available. (Tr. 25-26.)

SOR ¶¶ 1.c and 1.d (\$42,751 and \$23,233): These are Applicant's student loans and totaled \$65,984 at the time of the SOR. The original monies, \$40,687, were dispersed in 2001 and became delinquent in 2012. According to the creditors, the balance was \$66,514 in February 2014. He made nine payments of \$520 toward the loans since March 1, 2014, reducing the debt by about \$4,680. He intends to pay the debts until they are resolved. (Tr. 27-28; AE 8, AE 9.) They recently began to be resolved.

SOR ¶ 1.e (\$17,236): This allegation is a duplicate of one of the allegations listed in SOR ¶¶ 1.a or 1.b, referencing Applicant's wife's student loans. (Tr. 29-30, 33.) Applicant disputed this debt with a credit bureau reporting company, and it has been removed from his report. (AE 10.) The debt is resolved.

SOR ¶¶ 1.f and 1.g (\$1,103 and \$329): These are debts owed to a medical provider for services Applicant received. He has made payments on them since August or September 2014. The balance is \$476 and should be resolved by April 13, 2015. (Tr.35; AE 7.) They are being resolved.

SOR ¶ 1.h (\$600): This judgment debt was paid in March 2014. It was owed to a county sewer department since July 2013. (AE 5.)

In summary, Applicant resolved about \$23,472 of the \$119,306 SOR-alleged debts. For the past year he has been making monthly payments on his two student loans. He has two more payments on the medical debts. The judgment is paid. His wife's student loans totaling \$34,054 remain unresolved since 2009.

Applicant submitted a budget. His net monthly income is \$4,642. After paying expenses he now has about \$1,200 remaining because he recently paid off car loans and old business expenses. (Tr. 26; AE 2.) He is repaying \$120 a month on a 401(k) loan he used to pay his mortgage sometime after 2012. The loan balance is \$1,500. (Tr. 40, 46-47.) He has one credit card and his wife does not have any. (Tr. 46.) He has not participated in credit or financial counseling because he wanted to manage his finances without assistance. (Tr. 43.) He would like to start resolving his wife's loans. (Tr. 26.) After making the final payment on the medical debts in two months, he will have about \$500 per month available to pay her loans. (Tr. 41.)

Applicant provided two letters of recommendation. One author has known Applicant since high school. He considers Applicant a trustworthy person. (AE 3.) A colleague wrote that Applicant has a "good character." (AE 4.)

Applicant's wife and supervisor are aware of these proceedings. (Tr. 20.) However, he is not certain that his wife appreciates the seriousness of their financial delinquencies and the potentially adverse consequences it may have on his employment. He has not told her of the scope of the Government's concerns because he does not want to create stress for her. (Tr. 44-45.)

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 (AG) 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 access to classified information 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. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Between 2009 and 2013, Applicant accumulated substantial debts, primarily student loans, which he was unable or unwilling to begin resolving until 2014. The evidence is sufficient to raise both potential disqualifications, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated 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 explained that his financial delinquencies arose as a consequence of his choosing to fund a new business in the amount of \$43,000, and to spend \$3,000 to \$4,000 on his wife's political campaign. Those were not circumstances beyond his control, but rather decisions he voluntarily made to spend available resources on things other than his existing obligations. AG ¶ 20(b) does not provide mitigation.

Applicant did not participate in credit or other financial counseling. He submitted evidence that one SOR-listed student loan is a duplicate allegation, and that he began repaying his two student loans at the end of February 2014. He paid a 2013 county utility judgment in March 2014, and will finish resolving two old medical debts in April 2015. His wife's student loans, delinquent since 2009, remain unresolved. He provided a budget that addresses current bills and lists discretionary monthly income of \$1,100. While there are some indications that he is resolving delinquent debts, there is insufficient evidence to conclude that his financial matters are under control. AG ¶ 20(c) has minimal application. Applicant's efforts since early March 2014 to pay the debts alleged in SOR ¶¶ 1.c, 1.d, 1.f, 1.g, and 1.h, demonstrate some good-faith effort to resolve those financial obligations. AG ¶ 20(d) has limited application to those debts, given the fact that only one debt is completely resolved, and he has reduced his student

large student loan by less than \$5,000 to date. He successfully disputed the debt in SOR ¶ 1.e, and it was removed from his credit report. AG ¶ 20(e) applies to that debt.

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(a):

- (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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a 40-year-old man who has successfully worked for his employer since 2001 and has held a security clearance during that employment. His employer is aware of his financial problems. A colleague attested to his good character. These are factors that weigh in favor of granting him a security clearance. However, there are several facts that persuasively outweigh those factors and raise concerns about Applicant's judgment and reliability.

On March 1, 2012, Applicant submitted a SCA for purposes of a re-investigation of his security clearance. In that SCA he disclosed delinquent debts, including both his and his wife's student loans, which became delinquent in 2012 and 2009, respectively. He indicated that he was unable to repay those loans because he spent \$43,000 on a business between 2009 and 2011. He also disclosed that he was delinquent on other financial obligations during that time, including a mortgage.

During his hearing, Applicant admitted that another contributing factor to the unpaid delinquent debts was his contribution of \$3,000 to \$4,000 to his wife's political campaign. Essentially, Applicant, a mature, intelligent individual, chose to spend \$46,000 to \$47,000 on personal endeavors, rather than addressing and resolving student loan commitments. He waited two years, March 2014, to begin paying his delinquent student loan debt, which originated in 2001, and then totaled about \$66,514. His wife's student loans have been delinquent for about five years and remain

unaddressed. Although he started to resolve some financial responsibilities within the last year, he does not have a solid plan to resolve his cosigner obligation to repay his wife's loans that total over \$34,000.

Overall, the record evidence leaves me with doubts and concerns as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraphs 1.c and 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant

Conclusion

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

SHARI DAM
Administrative Judge