



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



In the matter of:)
)
 -----) ISCR Case No. 13-01392
)
 Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

10/10/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated security concerns related to Guideline F and Guideline E. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On February 3, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 (AG) effective within the DOD on September 1, 2006.

In an undated Answer to the SOR, Applicant responded to the allegations and requested a decision without hearing. The Government prepared a File of Relevant Material (FORM) containing eight attachments to support the Government's position in this matter. Applicant timely submitted a response to the FORM. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 28, 2014. I have thoroughly reviewed the FORM and other case file materials. Based on the materials

submitted, I find that Applicant met his burden in mitigating financial considerations and personal conduct security concerns. Clearance is granted.

Findings of Fact

Applicant is a 26-year-old college student and outside machinist (OSM) who has worked for the same employer for over a year. He has prior management experience dating back to 2005. Applicant is single and he has no children. Balancing school and work, Applicant failed to review his credit report before applying for a security clearance. He was unaware that his student loans were past-due. He did not intend to mislead or defraud when he denied having any delinquent debts on his security clearance application. During an interview with investigators in the summer of 2013, Applicant learned that his loan payments had been disrupted. This apparently caused his loans to become delinquent. He immediately took rehabilitative action to address the situation, as described below.

At issue are eight delinquent debts noted in the SOR. Allegations ¶¶ 1.a-1.c represent debts to the U.S. Department of Education (ED) for accounts placed for collection in the amounts of \$6,162, \$6,090, and \$6,027, respectively. Allegation ¶ 1.d represents a debt to a state university (SU) that is 120 days or more past due in the approximate amount of \$711. Allegation ¶ 1.e represents a debt to ED that is 120 days or more past due in the approximate amount of \$316. Allegations ¶¶ 1.f and 1.g represent debts to ED for accounts placed for collection in the amounts of \$2,935 and \$2,414, respectively. Allegation ¶ 1.h represents a debt to ED that is 120 days or more past due in the approximate amount of \$140. A credit report dated August 27, 2013 (FORM, Attachment 6), reflects these accounts. A subsequent credit report, dated July 7, 2014 (FORM, Attachment 7), indicates that these accounts were transferred in June 2014 for slightly differing balances to a nationally recognized conglomerate (NRC) specializing in the administration and streamlined repayment of student loans and education financial services. In number, this 2014 credit report shows one account more under ED (8) than it does under NRC (7) due to a duplicated ED entry. The eighth account at issue in the SOR, the since-rehabilitated account with SU, is not reflected as a negative entry on the recent June 2014 credit report.

Applicant provided evidence of regular payments to NRC dating back to at least August 2013 regarding his former ED student loan balance. (Response to the FORM, at Attachments 1A-C) Under this arrangement, \$50 payments are applied to rehabilitate past-due accounts while larger payments are applied to the delinquent balance now held by NRC. Applicant also provided evidence of quarterly payments to a well-known national provider of customer care and repayment services for campus based loans, private education loans, and Federal Family Education Loan Program loans (NP) for his loan with SU. Payments to NRC and NP are automatically debited from Applicant's bank account. (Response to the FORM, Attachments 2A-B) He denies that he sought to defraud or mislead when he denied having delinquent debts on his security clearance application, credibly repeating that the situation was unknown to him at the time.

Applicant is contrite over his past financial ignorance. He has approached the rehabilitation of his student loans as a learning process. Applicant has verified that NRC and NP are properly in sync with his bank for debiting purposes, so “as to not fall into the mistake I made originally and to ensure that I never have a late payment again.” (Response to the FORM, Cover Letter) He is committed to being more attentive with his finances and satisfying his student loans. He feels confident he is now in control of his finances due to his current employment and careful budgeting. Applicant feels his job is “nothing short of a blessing.” (Response to the FORM, Cover Letter) He will not jeopardize either his job or his finances again.

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 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 access to classified information will be resolved in favor of 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 not drawn 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, 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 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.

Section 7 of Executive Order 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had multiple delinquent or past-due student loans. Applicant did not deny this to have been the case. Therefore, the following financial considerations disqualifying conditions apply:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

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

Five conditions, however, could mitigate the security concerns raised in this case:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 explanation of the facts is limited to the written record. The record implies that his student loans initially became delinquent and past-due because of some mishap involving an auto-debit process. Regardless, it is plain that the result was not due to intentional neglect. Over six months before the SOR was issued, after learning of the delinquencies from investigators, Applicant immediately enrolled his ED and SU debts into NRC and NP for auto-debit payments. He showed that such payments have been regularly made for over a year. His oversight can be attributed to youthful inexperience, just as his quick response to the problem can be characterized as a successfully learned life experience. Financial Considerations Mitigating Conditions AG ¶ 20(c) and AG ¶ 20(d) apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's denied having delinquent debt on his security clearance application. If his answer was intentionally false, one of the following disqualifying conditions would apply:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

As noted, for AG ¶¶ 16(a) and 16(b) to apply, Applicant's omission must have been deliberate. The Government established that his answer was incorrect. Applicant countered by explaining that he was unaware that his student loans were delinquent or past-due. Whether this was due to his failure to check his credit report or through a

disruption to an auto-debit mechanism for repayments, his denial of intentional falsity is plausible, and nothing indicates that his comments are less than credible. When an allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred. (See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 1, 2004)(explaining ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

As noted, Applicant's explanations are credibly plausible, a factor fortified by a record that indicates no other suggestions of falsity. Given the totality of the facts and circumstances, I find the Government has not established that the Applicant intentionally withheld information during his investigation. AG ¶¶16(a) and 16(b) are not established and Personal Conduct concerns are 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(a). 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 limited facts and circumstances noted in this case. I incorporate my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, others may have warranted additional comment.

In his early to mid-20s, Applicant's student loans became delinquent or past-due when his repayment method was unknowingly disrupted. When informed of this during an interview in the summer of 2013, he took quick action to enroll his repayments through NRC and NP. Once there, payments resumed by at least August 2013, half of a year before the SOR was issued. He has been in regular, uninterrupted repayment for over a year. Applicant is fully appreciative of and beholden to his employer and his present work. There is little likelihood he will again raise financial considerations or other security concerns. Moreover, there is no evidence showing that he intended to mislead or defraud when he denied having any delinquent debts on his application for a security clearance. Based on these considerations, I find that Applicant mitigated financial considerations and personal conduct 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	FOR APPLICANT
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline E	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge