



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



In the matter of:)
)
) ISCR Case No. 14-00211
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2014

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On April 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 22, 2014, and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2014, scheduling the hearing for August 12, 2014. The hearing was convened as scheduled. Government Exhibits (GE) 1 and 4 through 6 were admitted in evidence

without objection. GE 2 was admitted over Applicant's objection. The objection to GE 3 was sustained. Applicant testified, but he did not submit any documentary evidence. The record was held open until August 26, 2014, for Applicant to submit additional information. He submitted documents that were marked Applicant's Exhibits (AE) A through C and admitted without objection. DOHA received the hearing transcript (Tr.) on August 21, 2014.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer, but at different locations, since March 2010. He transferred to his current location in August 2013. He is applying for a security clearance for the first time. He is a high school graduate, and he attended a technical school from August 2007 through March 2009. He is single but engaged to be married. He does not have any children.¹

The SOR alleges a delinquent \$529 medical account (SOR ¶ 1.a); five past-due student loans with balances totaling \$37,824 (SOR ¶¶ 1.b–1.f); and a collection account for \$4,602 (SOR ¶ 1.g). All of the debts appear on at least one credit report. Applicant denied owing the debt alleged in SOR ¶ 1.g, stating he did not recognize the creditor. He admitted owing the remaining debts.

Applicant was unemployed from March 2009 until he was hired by his current employer in March 2010. The training and education he received in technical school made him eligible to work for his employer. His student loans were deferred while he was unemployed. He stated that an official at the technical school was arrested for taking student loans out in students' names and embezzling the money. The official's actions may have affected him, but Applicant also admits that he borrowed about \$32,000, consisting of the five student loans alleged in the SOR. Four of the loans have been consolidated into one loan for payment purposes.²

Applicant did not pay what was owed every month on his student loans, but he stated that he paid what he could. He testified that he paid about \$3,000 toward his student loans. He incurred expenses when he transferred to his current location in August 2013 in order to be closer to his ill mother. He listed his delinquent student loans on his Questionnaire for National Security Positions (SF 86), which he submitted in August 2013, and he fully discussed them during his background interview in September 2013. He told the interviewer that he would begin paying the student loans on a regular basis. Applicant is getting married in a few weeks. The wedding expenses made it difficult to pay the student loans. He also indicated that his overtime hours have been cut.³

¹ Tr. at 19-20, 28-29, 49; GE 1, 2.

² Tr. at 19-25, 41; Applicant's response to SOR; GE 1, 2, 4-6; AE A-C.

³ Tr. at 22-24, 28-29, 33-34, 41-42; Applicant's response to SOR; GE 1, 2.

Applicant established that he made the following payments toward his student loans:

<u>Date of payment</u>	<u>Amount</u>	<u>Loan</u>
October 21, 2007	\$50	Single loan
February 28, 2008	\$10	Single loan
April 21, 2008	\$40	Single loan
July 3, 2008	\$10	Single loan
November 6, 2008	\$40	Single loan
May 18, 2009	\$10	Single loan
June 22, 2009	\$10	Single loan
March 14, 2012	\$200	Single loan
April 18, 2012	\$100	Single loan
May 22, 2012	\$100	Single loan
August 29, 2012	\$212.88	Consolidated loans
December 7, 2012	\$319.20	Consolidated loans
February 27, 2013	\$200	Consolidated loans
April 19, 2013	\$200	Consolidated loans
May 31, 2013	\$200	Consolidated loans
May 31, 2013	\$100	Single loan
July 18, 2013	\$100	Consolidated loans
September 19, 2013	\$100	Single loan
September 20, 2013	\$200	Consolidated loans
November 13, 2013	\$150	Single loan
November 14, 2013	\$150	Consolidated loans
April 7, 2014	\$100	Single loan
April 8, 2014	<u>\$150</u>	Consolidated loans
<u>Total:</u>	\$2,752.08⁴	

Only \$192.74 of the above payments went to the principal on the loans; the remainder went to interest on the loans. The current balance due on the four consolidated student loans is \$19,635, which includes \$1,412 owed in interest. The balance due on the individual loan was not provided.⁵

Applicant testified that he paid the \$529 medical debt alleged in SOR ¶ 1.a the day before the hearing.⁶ His testimony on that debt is accepted.

Applicant denied owing the \$4,602 collection account alleged in SOR ¶ 1.g. He stated that he did not recognize the creditor. The debt is listed by Equifax and Experian on the combined credit report from September 2013. It lists the date of last action as

⁴ AE A-C.

⁵ AE A-C.

⁶ Tr. at 25-28, 34-35; Applicant's response to SOR; GE 2, 4-6.

October 2007. The debt is not listed on the Equifax credit reports obtained in February 2014 and August 2014.⁷

Applicant stated that he made arrangements to start paying a set amount towards his student loans after his wedding. He has a good job, and he will be able to pay the monthly amount. He earned about \$68,000 in 2013. He also stated that if he receives a security clearance, he will be eligible for a higher-paying job, and he will use the additional funds to pay the student loans. He is current on his other bills, including the \$627 monthly payments on a \$31,274 car loan that was incurred in August 2012. His SF 86 indicates that he visited foreign countries for tourism in May 2012 and again in November 2012. He has not received financial counseling.⁸

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(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."

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

⁷ Tr. at 35-36, 45-48; Applicant's response to SOR; GE 2, 4-6.

⁸ Tr. at 22-23, 29-33, 43-44, 49; GE 4-6.

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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts, and he was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate 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, 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 paid the \$529 medical account alleged in SOR ¶ 1.a the day before the hearing. He disputed owing the \$4,602 collection account alleged in SOR ¶ 1.g, and the debt is not listed on the two most recent credit reports. AG ¶¶ 20(d) and 20(e) are applicable to those debts.

Applicant was unemployed from March 2009 until he was hired by his current employer in March 2010. He transferred in 2013 to be closer to his ill mother. Those events were beyond his control. His wedding expenses are not beyond his control.

Applicant has been steadily employed since March 2010 in a good job that he was qualified for because he attended technical school. He has paid \$2,752 toward his student loans. Since December 2013, he has paid a total of \$250, and nothing since April 2014. It is difficult to accept that he could not have paid more towards his student loans when he vacationed in foreign countries twice in 2012 and he is paying \$627 each month on a \$31,274 car loan. Applicant stated that he will resume paying his student loans in September 2014. The Appeal Board has held that "intentions to pay off 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) (quoting ISCR Case No. 08-08440 at 2 (App. Bd. Sep. 11, 2009)).

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. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. There are no mitigating conditions applicable to Applicant's student loans.

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.

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. Applicant has been steadily employed in a good job for more than four years, but he has done little to address the student loans that made it possible for him to earn his education and obtain his job. Because of interest, he owes more now than when he obtained the loans. His conduct raises doubts about his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.f:	Against Applicant
Subparagraph 1.g:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge