



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



In the matter of:)	
)	
)	ISCR Case No. 14-00409
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2014

Decision

WHITE, David M., Administrative Judge:

Applicant has one unresolved delinquent student loan debt that has increased to \$17,868 while held by a collection agency. Despite five years of continuous employment, he demonstrated no effort to repay or otherwise resolve it. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on October 17, 2013.¹ On March 18, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

¹Item 4.

²Item 1.

Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR (Answer) on April 7, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on April 29, 2014. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on May 9, 2014. He submitted no material in refutation, extenuation, or mitigation within the 30-day period thereafter, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on June 30, 2014.

Findings of Fact

Applicant is 30 years old, single, and childless. He earned a bachelor's degree from a state university in August 2008. He has no military service, and this is his first application for a security clearance. He started his present employment as a welder, working for a defense contractor, in October 2013. Prior to obtaining this position, he worked as a chef from July 2010 to September 2013, and as a truck driver from May 2009 to September 2010. He was unemployed from October 2008 to May 2009, and worked as a line cook in a restaurant from June 2006 to October 2008.⁵

In his response to the SOR, Applicant admitted the allegation in SOR ¶ 1.a and denied the allegation in SOR ¶ 1.b, with some explanations.⁶ Applicant's admissions are incorporated into the following findings of fact.

Applicant has a delinquent student loan. He took out this loan in September 2004, from the lender identified in SOR ¶ 1.b, in the amount of \$12,990. The record credit report shows that the last activity on this account was in March 2008, and that the original lender placed it for collection and filed a claim with the Government for the insured portion in December 2008. The credit report shows a zero balance due to the original lender on the account.⁷

³Item 3.

⁴The Government submitted five Items in support of the SOR allegations.

⁵Item 4.

⁶Item 3.

⁷Items 3 and 5.

Applicant admitted, and the record credit report confirms, that this debt remains delinquent and is now held by the collection agency identified in SOR ¶ 1.a. As of November 2013, accrued interest and fees have increased the balance being claimed by the collection agency to \$17,868.⁸

Applicant's only response to the Government's concerns about the security significance of this delinquent debt, as formally expressed in the SOR and the FORM, was to state in his Answer, "I am interested in seeking legal advice to discuss settling possibilities in the near term. I am willing to communicate with the collection agency to discuss payment options to eliminate this financial debt."⁹ He offered no evidence of any such communication or other attempt to resolve this outstanding legal obligation.

There is no evidence that Applicant was requested to respond to financial interrogatories from DOHA, or that he responded if such a request was made. He submitted no financial statement, or other evidence concerning his budget, income, assets, and ability to repay this debt. The record credit report shows that all of his other credit accounts, including several smaller student loans, are either paid in full or being paid as agreed.¹⁰

Applicant submitted no evidence of financial counseling or other efforts to establish financial responsibility. He provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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.

⁸Items 3 and 5.

⁹Item 3.

¹⁰Item 5.

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 under 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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant obtained a student loan in the amount of \$12,990 in September 2004. After his graduation from college in 2008, and his failure to make required payments, the lender placed the loan for collection and made a claim to the Government for the insured portion. Despite his continuous employment since May 2009, and payment as agreed on all other debts, he provided no evidence of efforts to repay or otherwise resolve this debt. It is now held by a collection agency and the balance due has risen to \$17,868. This evidence raises security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's student loan debt has risen by more than 37% over the past six years without any apparent effort to resolve it. The balance remains due and continues to increase. Applicant's apparent lack of any effort to address this obligation during five years of continuous employment prevents a finding that his behavior does not cast

doubt on his current reliability, trustworthiness, or good judgment. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). He has been fully employed during the past five years and asserted no other hardship that may have interfered with his ability to address this obligation.

Applicant offered no evidence of financial counseling, did not establish clear indications that the problem is being resolved or is under control, and demonstrated no effort to repay or otherwise resolve this significant and growing debt. MC 20(c) and 20(d) are therefore inapplicable.

Applicant credibly explained that the debt alleged in SOR ¶ 1.b is a duplicate credit report listing of the original student loan that is now held by a collection agency as described in SOR ¶ 1.a. The dates and annotations contained in the record credit report confirm this explanation. Accordingly, he mitigated the allegation in SOR ¶ 1.b, as being a source of distinct or additional security concerns, under MC 20(e).

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility is ongoing toward a delinquent student loan debt of \$17,868 that continues to grow while he fails to address it. This debt did not arise under circumstances that were beyond his control, yet remained unresolved during his past five years of continuous employment. He offered no evidence of financial counseling, rehabilitation, better judgment, or responsible

conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

In the absence of any demonstrated effort to resolve or rehabilitate this single delinquent student loan debt, or to otherwise mitigate the resulting security concerns, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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.

DAVID M. WHITE
Administrative Judge