



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



In the matter of:)	
)	
)	ISCR Case No. 08-05374
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro Se*

December 19, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF 86), on October 10, 2007. On September 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on September 24, 2008. He answered the SOR in writing and requested a hearing before an administrative judge.

DOHA received the request on October 16, 2008. Department Counsel was prepared to proceed on October 27, 2008, and I received the case assignment on October 28, 2008. DOHA issued a notice of hearing on November 3, 2008, and I convened the hearing as scheduled on November 20, 2008. The government offered four exhibits (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on December 1, 2008. I held the record open until December 5, 2008, for Appellant to submit additional matters. On December 4, 2008, he submitted eight exhibits, Appellant Exhibit (AE) A through H, without objection. The record closed on December 5, 2008.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on November 8, 2008. (Tr. 9.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive this notice 15 days before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. 9.)

Findings of Fact

In his Answer to the SOR, received on October 16, 2008, Applicant admitted the factual allegations in ¶¶ 1.c and 1.d of the SOR. He denied the factual allegations in ¶¶ 1.a, 1.b and 1.e of the SOR.¹

Applicant is 26 years old. He was born in Switzerland to Iranian parents. He immigrated to the United States (U.S.) with his parents in 1984 and along with his parents, became a U.S. citizen in 1993. He is fluent in Farsi. He is single and engaged to be married. His mother continues to reside in the U.S., but his father resides in England. He speaks with his father every two or three months.²

As he grew up, his parents encouraged him to attend the best college that accepted him for enrollment. He graduated from high school in 1999 at age 17. He enrolled in a prestigious and expensive private university as expected by his parents. His parents provided him with some spending money while in college, but did not pay his tuition, books and housing as they lacked the financial resources. To finance his education, he borrowed money through the federal government and private education loans. He received a Bachelor of Science degree in psychology in 2003 with plans to attend medical school. He estimated he borrowed \$110,000 in federal and private education loans to pay for this education.³

¹Response to SOR.

²GE 1 (Security clearance application) at 6, 7; Tr. 44-46, 59. His parents are in the process of divorcing.

³Tr. 33, 47, 62-64.

Because he believed he needed additional education to go to medical school, Applicant enrolled as a part-time student in a master's degree program at another private university in another city. His classes began in September 2003 and he graduated in August 2008 with a master's degree in Public Health Administration. He borrowed approximately \$60,000 through the federal education loan program to pay for this education. He worked full-time while working on his master's degree.⁴

In September 2008, Applicant learned that he was being restructured out of his job, which ended on September 30, 2008. He began receiving \$380 a week in unemployment in October 2008. He started a new job in pharmaceutical sales on December 1, 2008 at a salary of \$62,000 a year plus a bonus. He estimates that his net pay will be approximately \$3,500 a month, which is about \$1,000 more than his net pay in his last job. He has \$600 a month in income from another source. If he has a security clearance, his fluency in Farsi would enable him to earn significantly more money at another company.⁵

Applicant's monthly expenses total \$2,839, including \$569 in school loan payments. His salary was being garnished at his last job at the rate of \$448 a month. The garnishment was for one of his federal loans. By the time his job ended, he had paid approximately \$3,600 on this garnishment.

As a graduate student, most of Applicant's federal education loans were placed in deferment status. When he started graduate school, he believed that his private education loans were also in deferment. He found out that he was wrong. As a result, his two private education loans, totaling \$65,000, went into default. He has attempted to work out a payment plan for these loans, but the creditor requested a monthly payment of \$1,500, which he could not afford. He paid the remaining \$1,800 private education loan in full in November 2008.⁶

Applicant has 16 federal education loans. All but two of these loans are in forbearance, also called deferment, until May 2009. The two remaining loans are listed as defaulted. The largest of these two loans, \$17,000 is guaranteed by a state educational services corporation. The State garnished his wages beginning in May 2008 to pay this loan. The garnishment ended when he lost his job. He also entered into a rehabilitation plan with the State on this loan. Since May 2008, he has paid \$175 a month in addition to the garnishment amount to return this loan to good standing. He anticipates that the loan will return to good standing in February 2009. Applicant has

⁴Tr. 34, 62.

⁵GE 2 (Interrogatories to Applicant and his answer with attachments) at 52-54; Tr. 36-38, 60-61.

⁶GE 2, *supra* 5, at 50; GE 3 (Credit report, dated November 7, 2008) at 21; AE B (Copy of bank statements); AE C (Copies of cancelled checks) at 1, 3, 5; AE H (Payment profile on private loan); Tr. 25-28, 32, 41. I note that the creditor for the private loans is asking Applicant to repay his debt at the rate of \$18,000 a year, which will pay his loans in full in about four years. Such payments are difficult when an individual must pay rent, buy food and meet other ordinary living expenses.

also entered into a rehabilitation program for the second loan in default. He started paying \$94 a month in May 2008 to rehabilitate this loan. He expects that this loan will also be rehabilitated in February 2009. Once these loans are in good standing, he plans to consolidate all his federal loans into one monthly payment. He believes that once he rehabilitates his defaulted loans, the garnishment will end.⁷

Applicant denies owing the one remaining debt, a cell phone, alleged in the SOR as he has no knowledge of the debt. The credit report he obtained in June 2008 did not show this debt nor does the February 13, 2007 credit report. He learned about the debt when he received the government's proposed exhibits in this case.⁸

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

⁷GE 2, *supra* note 5, at 22, 53-54; AE B; AEC, *supra* note 6, 2, 4; Tr. 30, 40, 54..

⁸GE 2, *supra* note 5; GE 3, *supra* note 6; GE 4 (Credit report, dated February 13, 2007); Tr. 42-43

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 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.

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

The security concern relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant debt while attending undergraduate and graduate school. He has been unable to pay his education loan obligations. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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. His debts are recent and current. Thus, the mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “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.” As he grew up, Applicant’s parents instilled in him the idea that he should attend the best college he could. Based on his upbringing, he chose a prestigious private university for his undergraduate education. His parents advised him to borrow the funds he needed to pay for his education, as they lacked the resources to pay. At age 17, he relied on their advice. He was too young and inexperienced in financial matters to realize that this advice would cause him problems later and to understand the future financial impact to him. He made a reasonable decision based on the information given to him. He lost his job in September 2008. Despite his job loss, he continued to pay the previously agreed upon payment plans for his education loans. He started new employment on December 1, 2008. I find this potentially mitigating condition partially applies.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not contacted a credit counseling service to help resolve his delinquent debts. He has acted on his own to resolve his debts. He initiated a rehabilitation plan for two of his delinquent federal education loans in May 2008. He has complied with the repayment plan. He has fully resolved an \$1,800 private education loan. He, however, has been unable to resolve or develop a repayment plan for the two delinquent private loans. He pays his monthly expenses and does not incur any other debts as part of his daily living expenses. He is financially sound as related to his current living expenses. I conclude these potentially mitigating conditions apply only to allegations 1. a and 1.b of the SOR.⁹

Applicant denies that he had an account with a cell phone carrier. Only one of the three credit reports of record indicates that Applicant owed money to the creditor listed in allegation 1.e of the SOR. Given Applicant’s denial, I find that the evidence of record is insufficient to establish this 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 the 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

⁹AG ¶¶ 20(e) and 20(f) do not apply in this case.

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 common sense 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 financial problems are the result of inappropriate advice given to him by his parents about paying for his college education. As a result, he has accumulated more than \$150,000 in private and federal educational loans. One-half of these loans are currently in forbearance. The remaining are in default. Applicant has enrolled in and complied with a rehabilitation payment plan for the two federal education loans which are in default. He has also paid a small private education loan. He continued these payments even after he lost his job, a commendable decision on his part and an indication of his intent to pay his school loans. He plans to consolidate all his federal loans into one once he has rehabilitated the two loans in default. He expects this to occur sometime in the early spring. He has not resolved the issues related to his two private education loans totaling \$65,000, in part because his income does not allow him to pay the requested \$1,500 a month payment. At this time, he is not actively working with this creditor on this problem. Applicant has made progress in resolving his educational loan defaults, but has not resolved all the issues raised regarding his educational debts. He has not yet established a solid track record for paying all his education loans. Since he is still trying to resolve some significant debt and needs to show he is committed to paying his education loans, I find he has not mitigated the government's security concerns about his finances. Accordingly, I find that Applicant has not mitigated the security concerns arising from his financial considerations.¹⁰

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

¹⁰In today's society, many college students are incurring significant educational debt as a way to finance a college education, whether it is a private or a public institution. The issue of excessive educational debt and repayment will most likely come up again.

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.

MARY E. HENRY
Administrative Judge