



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



In the matter of:)	
)	
)	ISCR Case No. 10-00029
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

March 15, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on September 17, 2009. On November 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On December 17, 2010, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on

February 1, 2011. I convened a hearing on February 23, 2011, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced seven exhibits, which were identified and marked as Applicant's Ex. A through G and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on March 3, 2011.

Findings of Fact

The SOR contains a single allegation of disqualifying conduct under AG ¶ 18, Financial Considerations (SOR ¶ 1.a.). SOR ¶ 1.a. alleges that Applicant is indebted to a state higher education services corporation for a student loan account, in collection status, which totals approximately \$86,386. In his Answer to the SOR, Applicant admitted the allegation and denied that it was of security significance under the financial considerations adjudicative guideline. Applicant's admission is admitted as a finding of fact. (Answer to SOR; Ex. 3 at 4; Ex. 4 at 4.)

Applicant is 43 years old, twice divorced, and an employee of a government contractor. He seeks a security clearance for the first time. (Ex. 1; Tr. 43, 47-48.)

After graduating from high school, Applicant studied at two universities. In 1991, when he was in his early 20s, he enrolled at a third university in order to study acting. He acquired a bachelor's degree in acting in 1992 and a master's degree in acting in 1993. Applicant financed his acting studies with student loans. (Ex. 1; Tr. 43-45, 48-49.)

Applicant was married for the first time in 1993. He and his first wife divorced in 1995. Applicant married for a second time in 2002. He and his second wife divorced in 2004. At present, Applicant lives alone and has no dependents. He is close to his parents, who are retired¹ and have assisted him financially for many years. (Ex. 1; Tr. 47-48, 69-74.)

After completing his education, Applicant began to pursue an acting career in a major U.S. city. He took acting jobs, some of which ran for several months, but he also found it necessary to supplement his income with other work. In 1995, he acquired a role in a major dramatic production and was employed full-time for over two years. After the major dramatic production ended, he acquired acting work in television commercials, soap operas, television dramas, and television pilots. These jobs were often short term, and his income was not always steady. During this time, he also took non-acting temporary jobs as an administrative assistant, bartender, and party staff assistant. During this time he did not address his student loan debts. (Ex. 1; Tr. 45-46, 50.)

¹ Applicant's father is retired from government service. In his retirement, he owns a consulting business. (Tr. 73.)

Beginning in 2000, Applicant found it increasingly difficult to make a living as an actor. He did not have steady employment as an actor in 2001, 2002, and 2003. In 2004, he abandoned his acting career, moved away from the major U.S. city where he had worked and lived, and sought a new career as an administrator and manager. From 2004 until the present, he has had relatively steady employment in administrative management. He has been employed as a federal contractor for approximately one year. (Tr. 42, 45-47, 51-53.)

Applicant's student loans continued to accrue interest. In 2007, Applicant made a \$734 payment on his student loan debt. This was his first voluntary payment on his delinquent student loan debt. (Ex. A; Tr. 50.)

Thereafter, in 2007, Applicant made nine payments of \$400 to rehabilitate his delinquent student loans. After Applicant made these payments,² the loans were then refinanced, and \$11,814 was added to the principal. The loan amount was increased from \$46,000 to \$71,000. The increase also included penalties, interest, and additional fees. (Ex. A; Tr. 54-56.)

After the refinancing of Applicant's student loans, the creditor set Applicant's monthly payment at \$1,089. Applicant protested the amount of the repayment as beyond his means. Applicant offered to pay the creditor \$400 to \$550 a month, but the creditor insisted on receiving \$1,089 a month and did not offer Applicant a lesser payment amount. Applicant made no payments on his student loan debt in 2008. (Ex. A; Tr. 58-60.)

In September 2009, Applicant and the creditor entered into an informal undocumented understanding that Applicant would pay the creditor an initial \$275 on the delinquent loan debt, followed by monthly voluntary payments of \$300. He made the \$275 payment in September 2009. The creditor's payment record shows that Applicant then made another payment of \$275 in October 2009. Thereafter, between November 2009 and September 2010, Applicant made eleven monthly payments of \$300 to the creditor. In October 2010, he made a payment of \$150 to the creditor, and in November 2010, he made a second payment of \$150 to the creditor. (Ex. A; Tr. 61-62.)

Applicant explained that he made the \$150 monthly payments instead of the agreed-upon \$300 monthly payments because his living expenses increased when a romantic relationship ended and he was no longer sharing rent with another person. (Tr. 61-62.)

In January 2011, the creditor obtained an order directing that 15% of Applicant's biweekly disposable income be garnished in payment of his delinquent student loan debt, which was calculated to be \$86,150.70. The first garnishment payment of \$257.91 was deducted from Applicant's biweekly pay on February 11, 2011. (Ex. B; Ex. C; Ex. D; Tr. 62-63.)

² Applicant's last \$400 payment was made in November 2007. (Tr. 58-59.)

At his hearing, Applicant explained that his father has offered to lend him money to pay or settle the delinquent student loan debt. If this occurs, Applicant would owe a debt to his father, which he would repay over time. (Tr. 63-65.)

In response to DOHA interrogatories, Applicant prepared a personal financial statement in July 2010. At his hearing, he amended his personal financial statement to reflect current income and expenses. Applicant's net monthly income is \$2,634.³ His fixed monthly expenses are as follows: rent, \$1,300; utilities, \$130; food, \$200; miscellaneous, \$200. Since completing his personal financial statement, Applicant no longer has an automobile, and he no longer has automobile expenses. (Ex. B; Ex. 4 at 4-5; Tr. 67.)

Applicant's attachments to his personal financial statement showed that in March 2010, he had settled a \$5,035 state tax debt. In September 2010, he entered into a payment agreement to satisfy a second state tax debt of \$4,069 by paying \$125 a month. In June 2010, the Internal Revenue Service accepted Applicant's offer to pay a \$4,450 federal tax debt by making monthly payments of \$105. Applicant provided documentation to corroborate that he owed a credit union a delinquent debt of \$1,215 and was making monthly payments of \$100. Additionally, Applicant provided documentation corroborating that he was paying \$50 a month on a \$264 medical debt. (Ex. 4 at 4-13; Tr. 67-68.)

Applicant's personal financial statement reflected that he was making monthly payments of \$182 on three credit card debts totaling approximately \$2,443. Additionally, Applicant reported that he owed his father a debt of \$6,200 and was making monthly payments on that debt of \$100. At his hearing he reported that his father had suspended his payment obligation until later in 2011. Applicant's net monthly remainder is \$242. He discussed his student loan obligation with a financial counseling agency, and he has sought financial counseling from a family member. (Ex. 4 at 5; Tr. 63-64, 68.)

Applicant provided three letters of character reference. One of the letters was from a person who has known Applicant since childhood. This person described Applicant as "a hard working, well grounded, and responsible person." (Ex. E.)

The second letter was from an individual who supervised Applicant for three years. This person praised Applicant as trustworthy, dependable, honest, and reliable. The third letter was from a former colleague, who pointed out that Applicant possessed integrity and a strong sense of right and wrong. (Ex. F; Ex. G.)

³ This amount reflects Applicant's take-home income after taxes and deductions, including the biweekly garnishment of \$257.91 payable to the creditor holding Applicant's delinquent student loan debt. (Ex. B; Ex. 4 at 4-6.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an 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 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, the administrative judge applies these 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.” 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 in seeking 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 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. From 1991 until 1993, Applicant acquired student loans to finance his undergraduate and graduate degrees in acting. While his income fluctuated during his acting career, he did not address his student loan debt until 2007. In January 2011, the student loan creditor obtained an order garnishing 15% of Applicant’s biweekly disposable income in payment of his delinquent student loans. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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(a)) Additionally, unresolved financial delinquency might be mitigated if “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(b)) Still other mitigating circumstances that might be applicable include 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” (AG ¶ 20(c) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted that he owed approximately \$86,000 in delinquent student loans. In 2007, Applicant made a payment of \$734 on his student loan delinquency. This was his first payment on this debt which had increased considerably since he acquired it to finance his education from 1991 to 1993.

In 2007, in response to the creditor’s direction, Applicant made several payments of \$400 in order to rehabilitate his delinquent student loans. The creditor refinanced the loan debt and notified him that his required monthly payment on the delinquent student loan debt was \$1,089. Applicant told the creditor that the required payment was beyond his means. He made no payments on his delinquent student loans in 2008.

In 2009, the creditor informally agreed to accept a lesser amount in payment from Applicant. In accordance with this agreement, Applicant made two payments of \$275 and eleven monthly payments of \$300. When Applicant submitted two monthly payments that were less than the agreed-upon amount, the creditor obtained an order to garnish 15% of Applicant’s bi-weekly disposable debt to satisfy his delinquent student loan debt.

Applicant provided documentation that in the last year he had paid or negotiated payment plans for debts not alleged on the SOR. He has received some financial counseling. While his wages are currently being garnished to satisfy the large student loan delinquency, he may seek his father’s help in satisfying the debt.

Applicant’s student loan delinquency has existed for over 18 years. While Applicant took steps to rehabilitate his student loan debt in 2007, and made good faith payments in 2009 and 2010, his efforts were not consistent, leading the creditor to institute garnishment proceedings. Applicant’s efforts to resolve this debt are relatively recent, and he has not yet developed a track record of reliable payment over time. I conclude that AG ¶ 20(a) does not apply to the facts in this case.

Applicant chose a career in acting, and, despite success, he did not always have work as an actor. However, he accepted other kinds of work to supplement his income. He was aware of his delinquent student loans for many years, but he did not take timely action to satisfy them. I conclude that Applicant’s student loan delinquency was not caused by circumstances beyond his control. Accordingly, AG ¶ 20(b) does not apply.

Applicant has received some financial counseling, and his wages are being garnished to satisfy his delinquent student loan debt. However, it is not evident from the record that his financial problem is being resolved or is under control. Applicant's father may assist him by paying his student loan indebtedness for him, and then Applicant would be indebted to his father. It is not clear at this time whether Applicant will be able to satisfy his delinquent student loan debt from his own resources. I conclude that AG ¶ 20(c) does not fully apply to the facts of Applicant's case.

The record reflects that in 2007, nearly 16 years after incurring his student loan indebtedness, Applicant took steps to rehabilitate his student loans. However, after the loans were refinanced, the creditor set Applicant's monthly loan repayment at \$1,089 a month, an amount that Applicant claimed was beyond his means. Applicant informally negotiated a lesser amount of \$300 monthly with the creditor, and he made good faith payments, as agreed, until his living arrangement changed and he lacked sufficient resources to pay the full amount. For his good faith efforts to address this debt, Applicant merits some credit under AG ¶ 20(d).

However, when Applicant's financial resources changed, he failed to make the payments as agreed. The creditor then obtained an order to garnish 15% of Applicant's biweekly discretionary income. Pursuant to the garnishment order, \$257.91 is forwarded to the creditor from Applicant's pay every two weeks. A payment made because of an involuntary garnishment results in limited mitigation because it is not voluntary repayment of a debt. See ISCR Case No. 08-06059 at 6 (App. Bd. Sept. 21, 2009). Accordingly, I conclude that AG ¶ 20(d) does not fully apply to the facts of Applicant's case. Neither AG ¶ 20(e) nor ¶ 20(f) is relevant to the facts of Applicant's case.

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 is a mature person of 43 years. In 1991, 1992, and 1993, Applicant acquired student loans to finance his education. He did not address his student loan debt for at least 16 years, even when he had the resources to do so. It is well-settled that failure to discharge debts over a period of time constitutes a continuing course of conduct that raises concerns about an applicant's reliability and trustworthiness. ISCR Case No 07-10575 at 4 (App. Bd. Jul 3, 2008).

Recently, Applicant has acted in good faith to resolve debts not alleged on the SOR. Moreover, he made payments on his student loans in 2007, 2009, and 2010. Nevertheless, his financial situation remains tenuous. As of January 2011, his student loan debt is being satisfied by garnishment. His net monthly remainder is approximately \$242, leaving few resources for dealing with unexpected expenses or emergencies. It is too soon to tell if Applicant will meet his financial obligations and avoid delinquencies in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.: Against 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.

Joan Caton Anthony
Administrative Judge