



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



In the matter of:

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ISCR Case No. 10-09735

Applicant for Security Clearance

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel

For Applicant: *Pro se*

January 31, 2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for Financial Considerations and Personal Conduct. Accordingly, his request for a security clearance is denied.

Statement of the Case

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding that it is clearly consistent with the national interest to grant Applicant's request for a security clearance. On August 15, 2011, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision:

security concerns addressed in the Directive under Guidelines F (Financial Considerations) and E (Personal Conduct) of the Adjudicative Guidelines (AG).¹

DOHA received Applicant's undated Answer to the SOR on September 20, 2011. He denied 3 of the 13 allegations, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 25, 2011, and I received the case on November 4, 2011. DOHA issued a Notice of Hearing on November 14, 2011. I convened the hearing as scheduled on December 6, 2011.

During the hearing, the Government offered four exhibits, which I admitted as Government Exhibit (GE) 1 through 4. Applicant testified and offered 16 exhibits, which I admitted as Applicant's Exhibit (AE) A through P. The transcript was received on December 13, 2011.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is a 29-year-old high school graduate. He attended college from 2002 to 2006, but did not receive a degree. He is single and has no children. Applicant has worked for his current employer, a defense contractor, since 2008. His position is security systems administrator. He was recognized by a federal agency for his support to the security office in 2008. His company also awarded him a certificate of excellence for his "outstanding performance" in 2011. He completed his first security clearance application in March 2010. (GE 1; AE M)

In his security clearance application dated March 2010, Applicant stated that in 2006, after completing four years of college, he remained in state A, living with his parents. He was unemployed for one year. In August 2007, he obtained a part-time job as a cashier and stocker for one year. In July 2008, he moved to state B, where he currently resides. The following month, he obtained his current employment. However, in the same security clearance application, he listed that he moved from state A in 2007, rather than 2008. At the hearing, he testified that he left his parents' home in 2008 and moved to state B. (GE 1; Tr. 43)

Applicant used student loans to finance his college education. He signed the loan applications, and his mother co-signed them. Applicant submitted documentation from his mother corroborating that she handled the paperwork for his loans, and made

¹ Adjudication of this case is controlled by Executive Order 10865, as amended; DoD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines (AG), which supersede the guidelines listed in Enclosure 2 to the Directive. The AG apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

the payments. She also stated that she was laid off for two years "at the time he moved from (state A) to (state B)." It is unclear from the evidence when her layoff began, and if it occurred while Applicant was living with his parents, or after he moved to state B. However, Applicant left his parents' home (state A) either in 2007 or 2008, so it appears that his mother was laid off starting in either 2007 or 2008. (GE 1; AE A; Tr. 49)

Applicant began working shortly after he arrived in state B in either 2007 or 2008. At his hearing, he testified that he knew, at least as of 2006, that he had student loans, but was not aware of the details, or that they had been sold to collections agencies. At the hearing, he testified, "...I was working as soon as I moved here, and that's when I really started paying attention to my debt." (Tr. 81)

At his security interview in May 2010, Applicant stated he was not aware of the status of each of the student loan accounts. When provided with the summary of his security interview in the DOHA interrogatory, he signed a statement that the summary was accurate. In the same interrogatory response, he said he was not aware of his debts until after the security interview in May 2010. (GE 4)

Applicant testified that he did not talk with his mother about the loans before he completed his security clearance application, and that he "had just recently gotten out of school." He said "No" to the question about whether he had defaulted on any loans, because he "didn't know the loans had gotten that bad, because I was making payments on some." He testified that he did not receive any mail regarding the loans because he had moved from state A. He also testified that his mother sometimes called him and said, "... hey, I received this, you should call these people, you should make plans with this and that." He also testified that, "my mother would call me and say, give me some money on this loan...You need to pay them." (Tr. 45-50)

Applicant's gross annual pay is approximately \$85,000. After taxes and deductions, his net monthly take-home pay is \$2,590. Applicant pays out \$1,485 in monthly expenses, and \$808 in debt payments. Since beginning his part-time job in November 2011, he earns an additional \$900 per month net, for a total net monthly income of \$3,494. After deducting these costs, Applicant's monthly net remainder, which had been \$290, is now approximately \$1,200. (GE 4; AE L, P; Tr. 50-51, 72)

Applicant testified that he has taken steps to deal with his debts. His second job, working approximately 20 hours per week, provides extra income to pay down his student loans. His sister has agreed that Applicant can live with her, rent-free, if necessary. If he moved into his sister's home, he would have an additional \$1,000 per month to pay toward his student loans. She submitted a notarized statement agreeing to this proposition. (AE L, N; Tr. 35, 51-52)

The SOR consists of two small debts totaling about \$300, and ten student loans totaling \$27,525. The loans started becoming delinquent in May 2003, the end of

Applicant's first year in college. That year, three loans were in default. Four loans were in default in 2004, and two in 2005. These loans total \$17,300. these appear to be the nine loans alleged at SOR subparagraphs 1.c through 1.k, with the interest and collection fees added. (AE O)

The SOR debts appear in Applicant's credit bureau reports of April 2010 and June 2011. (GE 2, 3)

MEDICAL

1a (\$75) – PAID. Applicant provided documentation that he paid this debt on July 22, 2011 by deduction from his checking account. (AE D; Tr. 30)

CREDIT CARD

1.b - \$238 – PAID Applicant provided documentation showing that he made two payments of \$100 each on July 11 and July 25, 2011 by deduction from his checking account. He also provided a letter from the creditor stating the account is paid in full as of July 22, 2011. He testified he closed the account on July 25, 2011. (AE D, E; Tr. 30-31)

STUDENT LOANS

1.c – 1.k (18,380) – PAYMENT PLAN. These nine student loans went into default between 2003 and 2005. On March 1, 2010, Applicant's \$3,636 federal tax refund from the Internal Revenue Service (IRS) was seized to offset his student loan debt. In April 2011, his \$2,888 federal tax refund was seized to offset his student loan debt. Applicant recently consolidated these loans and set up a payment plan with the collection agency. He provided documentation showing that he made two payments of \$80 in July, 2011, and payments of \$80 in August and September, 2011. In October 2011, the IRS informed him that offset actions were being suspended. It also noted that offsets could be reinstated without further notice. (AE D, F, G, H, J; Tr. 30-32, 41, 56-59, 74-75)

1.l (\$8,307) – PAYMENT PLAN. Applicant also owes for an additional loan, disbursed in September 2005. He testified, "I've been paying (agency) since I left school." and "I've always given them money...Me personally, and my family., but I've always been in contact with them deferring something, or giving them whatever I can, whether it was agreed upon or not. Sometimes they may have asked for \$300, and I didn't have \$300, so I would give tem \$100." Applicant testified he is paying two agencies for this debt. For the first collection agency, Applicant made three payments in 2010 totaling \$424. Since July 2011, he has made five payments of \$200 and one payment of \$249, for a total of \$1,249. Approximately \$286 of that amount was applied to the principal. He established an agreement with the second collector in Fall 2011. He paid the second agency \$264 on September 13, 2011. He testified that he is paying \$91.20 per month on one plan, and \$99.59 per month on the second. Applicant testified that he is able to meet his payments without undue strain on his budget. (AE D, I, J; Tr. 32, 40, 43-44, 56-59, 60-64, 69)

When Applicant completed his security clearance application in March 2010, answered “No” to the questions that asked if, within the previous seven years, he had defaulted on any loan, or if any account had been charged off for failure to pay as agreed. Applicant denied that he deliberately failed to disclose his charged off credit card, and the default on his student loans. He testified that his mother paid for his student loans, and he was unaware that they were in default. (AE A; Tr. 45-50)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.² Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

A security clearance decision resolves only the question of whether it is clearly consistent with the national interest³ for an applicant to either receive or continue to have access to classified information. The Government must produce the admissible information on which it based the preliminary decision to deny or revoke a security an applicant’s clearance. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁴ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

reasonable doubt about an applicant's suitability for access in favor of the Government.⁵

Analysis

Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

The following disqualifying conditions are relevant under AG ¶19:

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

The delinquent loans Applicant has accrued since 2003, totaling approximately \$27,000, are sufficient to raise these disqualifying conditions.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

- (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; and
- (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.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Applicant has paid two delinquent debts, totaling about \$300, and they are no longer a security concern. However, Applicant's student loans have been delinquent since 2003, the end of his first year in college. They remain unpaid, and his serious efforts to resolve them only began in 2011. His lack of diligence reflects poorly on his trustworthiness and good judgment. His debts are both frequent and recent, and AG ¶ 20(a) does not apply.

AG ¶ 20(b) mitigates financial problems that stem from unexpected events beyond an applicant's control. Here, Applicant's mother was the primary payer on the student loans. He did not have control over the fact that his mother did not or could not keep up with the loan payments. She had financial setbacks when she lost her job. However, despite earning a good salary since 2008, Applicant did not make consistent efforts to bring his loans under control until the security process was underway in 2011. Even after being made aware of the situation at his 2010 security interview, he did not set up his payment plans until a year later. I find he did not act responsibly and AG ¶ 20(b) applies only in part.

Although Applicant has not sought out a credit counseling company or any other form of financial counseling, he has worked with the student loan collection agencies and set up payment plans on his own. He has a plan in place for a significant portion of his SOR debt, and has provided documentation that he has made payments. With his second job, Applicant has a substantial positive monthly cash flow and should have no problem making his student loan payments. Should he need additional cash to keep up, he has a fall-back position, in that he can move in with his sister and forego rental payments, if necessary. AG ¶ 20(c) applies. However, weighed against Applicant's failure to take any steps to resolve his debt over the past three years when he has been earning a steady income, and despite being under consideration for a security clearance, the partial mitigation available is insufficient to find for Applicant under Guideline F.

Personal Conduct

AG ¶ 15 expresses the security concern about personal conduct:

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.

The Government alleges that Applicant deliberately failed to disclose his charged-off account and his student loan defaults, implicating 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.

Applicant submitted a “clean” security clearance application, failing to report any financial issues. His student loans went into default starting in 2003, at the end of his first year in college. Applicant had a long history of delinquent student loans and was more than \$27,000 in debt at the time he completed his security clearance application in 2010.

Applicant's claim that he was unaware of their status is not credible. He admitted at the hearing he was aware in 2006 that he had student loans outstanding. He lived with his parents in state A for at least one year after he completed college in 2006. It is highly likely that he and his mother were notified during that year that the loans were in default. He testified that, even after he moved to state B, his mother sometimes contacted him, saying that he should get in touch with the loan collectors and make payments, or send her money to make payments. It is also highly unlikely that Applicant was unaware that his mother was out of work for two years, especially since it appears, based on the dates Applicant provided, that the unemployment occurred, at least in part, while he was still in state A. Applicant's income tax refund was seized in March 2010 to pay his defaulted loans, but it is unclear from the evidence whether this occurred before or after he completed his security clearance application in March 2010. Applicant knew or should have known that his loans would become delinquent when his mother was unemployed for a lengthy period. AG ¶ 16 applies.

Mitigating conditions AG ¶¶17(a) and 17(c) are relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

There is no evidence that Applicant informed any authorized government official that he wished to correct the answers on his applications. Although he discussed his debts with the investigator during his interviews, the Appeal Board has held that subsequent honesty at an interview does not negate the security implications of initial dishonesty on security clearance applications.⁶ AG ¶17(a) cannot be applied. Applicant's conduct cannot be considered minor because he failed to be forthright with

⁶ ISCR Case No. 02-23073 at 3 (App. Bd. Mar 20, 2004)

the Government during a security clearance investigation. In addition, Applicant submitted his latest security clearance application less than two years ago, making his conduct recent. The integrity of the security clearance process depends on the honesty of applicants. Applicant's failure to disclose his true financial situation casts doubt on his trustworthiness and good judgment. AG ¶17(c) does not apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

At the time these debts were incurred, Applicant was a college student whose mother was paying his student loans. His lack of diligence in taking responsibility for his debts can be attributed in part to his youth and financial inexperience. Applicant has taken the first steps toward resolving his debts. He initiated payment plans, and provided proof that he made payments. However, he did not act until the few months before his hearing, despite being aware that financial issues were a security concern from the time he completed his application and had his security interview in 2010.

When he completed security clearance application in 2010, Applicant failed to inform the Government of his true financial situation. The Government depends on the honesty of those who seek to hold security clearances. It cannot place its confidence in those who do not demonstrate the highest level of trustworthiness and reliability.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude he has not mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. – 1.l	Against Applicant
Paragraph 2, Guideline E	AGAINST Applicant
Subparagraph 2.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 interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge