



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02301

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2015

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated the security concerns regarding his financial considerations. Eligibility for access to classified information is granted.

Statement of Case

On September 8, 2014, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DoD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 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 (AGs) implemented by DoD on September 1, 2006.

Applicant responded to the SOR on September 29, 2014, and requested a hearing. The case was assigned to me on February 5, 2015, and was scheduled for hearing on March 26, 2015. At hearing, the Government's case consisted of two exhibits (GEs 1-2). Applicant relied on two witnesses (including himself) and five exhibits (AEs A-E). The transcript (Tr.) was received on April 9, 2015.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit him the opportunity to supplement the record with his stepdaughter's documented emails to her student loan lender. For good cause shown, Applicant was granted seven days to supplement the record. The Government was afforded two days to respond. Within the time permitted, Applicant's stepdaughter provided an email explanation of the unavailability of her emails due to automatic deletion. Applicant's stepdaughter's emailed explanation was admitted as AE F.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated three delinquent student loan debts and a consumer debt. These debts exceeded \$30,000. Allegedly, all of the alleged student loan debts were charged off and remain delinquent.

In his response to the SOR, Applicant denied each of the allegations. He disputed the amounts he owes the student loan lender and claims he made a lump sum payment of \$2,000 in February 2013 and continued to make monthly payments of \$360-\$365 up until August 2013. He claimed he was advised by a representative of the lender in August 2013 to cease all payments until the lender could investigate and determine what the correct amounts were on each of the student loans. He claimed he has been given "the run around on this matter for more than a year." See Applicant's response in the exhibit file.

Findings of Fact

Applicant is a 62-year-old sheet metal worker for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married his first spouse in December 1988 and divorced her in June 1993. (GE 1) He remarried in June 1996 and has one child and one stepchild from this marriage. (GE 1)

Applicant claimed no post-high school educational credits. He enlisted in the Navy in June 1972 and served three years of active duty before receiving an honorable discharge in June 1975. (GE 1)

Applicant's finances

In June 2007, Applicant co-signed a student loan for his stepdaughter in the amount of \$4,970. (GE 2) Terms of payment were \$78 a month for 181 months. (GE 2; AE C; Tr. 45) This loan (a private loan) contained a six-month grace period that commenced following his stepdaughter's graduation from college with a nursing degree in June 2010 and expired in 2011. However, this student loan contained no forbearance relief provisions to accommodate Applicant's stepdaughter pending her successful passing of her state nursing boards, a requirement for entering the nursing profession in her state. (Tr. 45, 62-63, 68-69) When neither Applicant nor his stepdaughter made any of their agreed monthly payments (commencing in early 2011) for over a year, the lender charged off the co-signed loan in April 2012, with a balance owing of \$7,972 (inclusive of compounded interest at the rate of 9.75% per annum). (GE 2 and AE C)

Applicant co-signed for a second student loan for his stepdaughter in September 2007. This loan, also a private loan with no forbearance relief provision, was for \$10,312. (GE 2 and AE C) Terms of payment of this loan were \$154 a month for 180 months. (GE 2 and AE C) Records reveal that neither Applicant nor his stepdaughter made any payments on this loan throughout 2011 and early 2012. With no payment history to look to, the lender charged off this loan as well in April 2012, with a delinquent balance of \$15,792 (inclusive of compounded interest at the rate of 9.75 % per annum). (GE 2 and AE C)

In March 2008, Applicant co-signed for a third student loan for his stepdaughter in the amount of \$5,600. Like the first two student loans he co-signed, this loan was a private loan with no provision for forbearance relief. (GE 2 and AE C) Terms of payment for this loan were \$81 a month for 180 months. Records reveal that neither Applicant nor his stepdaughter made any payments on this loan throughout 2011 and early 2012. With no payment history to evaluate, the lender charged off this loan in April 2012, with a delinquent balance of \$8,289 (inclusive of compounded interest at the rate of 9.75 % per annum). (GE 2 and AE C; Tr. 34)

Together, Applicant's co-signed disbursed loans totaled \$20,822. His only credited payments by the lender on these loans are the roughly \$1,560 in identified monthly payments he made between March 2013 and August 2013. (AEs A and C) His claimed \$2,000 payment was made by check in September 2013, payable to cash. While the check bears an endorsement, the endorsement cannot be identified as belonging to either the lender or its assignee. (AE B; Tr. 32-33, 36)

Applicant's stepdaughter assured that Applicant provided the \$2,000 for the down-payment on their charged-off loans as a condition to restoring the loans to active status. (Tr. 46) However, she did not identify the payee of the check or how the proceeds were transmitted to the lender to meet her loan reinstatement requirements. The on-line account summaries obtained by Applicant's stepdaughter report no credits for the \$2,000 check proceeds (reportedly reflected in AE C) earmarked for payment on the loans in issue as a pre-condition to reinstating them. Applicant believed the proceeds from the

check were placed on his stepdaughter's credit card and remitted to the collection agency as a credit card charge, but could provide no documentary proof. (Tr. 36) Without more documentary evidence of the check's disposition, the endorsed check in evidence cannot be probatively traced to the student loan accounts in issue. Based on the evidence presented, how the \$2,000 check proceeds were transmitted to the lender or its collection agent cannot be firmly established. Nevertheless, based on credible testimony of Applicant and his stepdaughter, Applicant is credited with making a \$2,000 payment to his stepdaughter to meet her loan reinstatement conditions. (Tr. 45-46)

As a co-signer of his stepdaughter's three student loans, Applicant looked to his stepdaughter to take responsibility for her loans once she passed her nursing board examinations and entered the nursing profession. When she encountered difficulties with her state board examinations, and could not find work following her graduation from college in 2010, Applicant's repayment obligations matured. (Tr. 35, 40, 56) What is not clear from the record is when Applicant learned of the defaults on the loans in issue and the ensuing charge-offs in April 2012. (GE 2) Applicant's credit reports do not reflect the dates of when he was notified of the loan defaults and charge-offs. Nor do the testimonial accounts of Applicant and his stepdaughter fix the dates of notice. (Tr. 37)

After initiating agreed monthly payments of \$360 in March 2013, Applicant and his stepdaughter became concerned about the noted size of the loan balances. Concerned about the status of his stepdaughter's student loans, Applicant spoke to a student loan representative in August 2013 about the amounts owed on the loans. (Tr. 32-33) At this point, he was told by the representative to cease making payments pending the results of an initiated internal investigation by the lender. (Tr. 33) Subsequent payments remitted by Applicant were rejected by the lender and returned to Applicant. (Tr. 38-39, 52)

In August 2013, Applicant's stepdaughter made telephone contact with the lender in an effort to ascertain the aggregate loan balance on her six outstanding student loans. (Tr. 46) Having been advised that she owed \$54,000 on her loans, she questioned the amount and asked the lender representative for a historical accounting. (Tr. 46, 55-56)

When Applicant's stepdaughter did not receive any documented accounting within the ensuing seven to ten days, she made a follow-up call to the lender. (Tr. 48) She received no response to this phone call either. Because neither of her phone calls were accompanied by documented emails, it is unclear what his stepdaughter conveyed to the lender and what kind of accounting detail she requested and expected to receive.

Receiving no feedback on her accounting request from the lender, Applicant's stepdaughter retained legal counsel in September 2014 to obtain a historical accounting of her loans from the lender. (AE D; Tr. 49, 51-52) Counsel, in turn, advised Applicant's stepdaughter to withhold payments "until we get it straight, to the exact amount." (Tr. 33, 37-41, 49-50) Whether the attorney retained has achieved any accounting results to date from the lender is unknown. Applicant did not provide any documented updates from the retained counsel. When Applicant's stepdaughter last talked to the lawyer in September 2014, the lawyer told her to stop paying on the loans while he looked into the accounts.

(Tr. 39) To date, neither Applicant nor his stepdaughter have heard anything further from the lawyer. (Tr. 39) Since September 2014, Applicant's stepdaughter has made at least three calls to the collection agent for the lender to inquire about the status of her accounting requests. (Tr. 59-60) Neither Applicant nor his stepdaughter have obtained any updated responses to their inquiries from the lender or its collection agent.

Based on a review of the loan disbursements and account summaries provided Applicant in September 2014 (AE C), accrued interest on the covered student loans, compounded at the respective rates of 9.75 per cent from their post-graduation maturity dates, accounts for most of the increased loan balances on the three listed student loans in issue. Reported loan balances on these three loans in February 2014 totaled approximately \$32,053. (GE 2) The last reported loan balances on these loans in September 2014 were higher, totaling \$36,612 in the aggregate. (AE C) Accrued interest is most likely the cause of the increased loan balances on each of the three co-signed student loans in issue.

Manifestly, some of the reported \$54,000 aggregate loan balance on the student loans taken out by Applicant's stepdaughter are attributable to the three other student loans co-signed by Applicant that are not included in the SOR. (AE C; Tr. 58) These three non-listed student loans were disbursed in March 2006, September 2006, and January 2007, respectively, and totaled \$14,185. (AE C) Uncertain about what is owing on the three loans, Applicant made reasonable efforts to enlist the lender and its collection agent to provide a historical accounting of all of the loans in which Applicant and his stepdaughter are obligated to repay.

Pending his receipt of a historical accounting from the lender on the loans in issue, Applicant and his stepdaughter understand that they are entitled to withhold scheduled payments in accordance with the furnished instructions they received from the lender's representative's agent and the advice of his stepdaughter's legal counsel Whether they are entitled to withhold all payments on the loans in issue is less than clear without access to the loan instruments themselves. For although Applicant and his stepdaughter may not know the exact amounts currently owing on their respective loans, they are likely responsible for a good deal of the reported loan balances.

Besides Applicant's three listed delinquent student loans, he accrued an additional delinquent debt, a medical debt of \$180 covered by subparagraph 1.d. (GE 2). Applicant documented his payoff of this debt in August 2013. (AE E)

Applicant's credit report does not reflect any accounts in delinquent or charge-off status. (GE 2) His other reported accounts all reflect "pays as agreed." (GE 2) His ability to address his co-signed student loans has never been questioned or placed in issue.

Policies

The AGs list guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors

that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns."

These AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following AG ¶ 2(a) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts. AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's accumulation of delinquent student loans he co-signed for his stepdaughter in 2007 and 2008. Applicant's actions warrant the application of two of the disqualifying conditions (DC) of the AGs: DC ¶ 19(a), "inability or unwillingness to satisfy debts," and DC ¶ 19(c) "a history of not meeting financial obligations."

Holding a security clearance involves the exercise of important fiducial responsibilities, among which is the expectancy of consistent trust and candor. Financial stability in a person cleared to access classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are also explicit in financial cases.

Applicant's payment responsibilities stem from the joint and several payment obligations he assumed when he co-signed each of the three student loans in issue. While it is not clear from the evidence whether he received joint billing notices on the loans, presumably he became aware of his payment responsibilities once his stepdaughter defaulted on her loans and the loans were charged off in April 2012. At this point, Applicant became an equally responsible obligor in the event his stepdaughter was not financially able to fulfill her payment obligations.

Because these three private loans at issue have only limited grace periods and no provisions for forbearance, Applicant could not defer his payment responsibilities once he became aware that his stepdaughter defaulted on her loans. From the evidence presented, neither Applicant nor his stepdaughter made any manifest payments on the three loans after they went into default status and were charged-off in April 2012. When Applicant was actually billed for the loans, or otherwise became aware of his payment responsibilities, is not clear from the developed record. Based on his unchallenged testimony, once he became aware of the defaults, he stepped in to help his stepdaughter and mounted monthly payment efforts between March and August 2013.

Applicant's stepdaughter's delayed entry into her nursing profession pending her successful passing of her state nursing examinations and inability to find work is what caused her to default on her student loans and shift payment responsibility to her stepfather. This and Applicant's delayed notice of the defaults and loan charge-offs add an extenuating factor to his own delays in meeting his guarantor responsibilities under the terms of the loans he co-signed for. MC ¶ 20(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," applies to Applicant's situation as to the first prong of the mitigating condition. Applicant's satisfying this first prong of MC ¶ 20(b), however, is not dispositive. As a co-signer of the loans, Applicant bore a joint and several responsibility to cover his stepdaughter's missed payments with his own payment initiatives. Whether Applicant acted responsibly after he learned of the loan defaults is also a consideration under MC ¶ 20(b).

To be sure, Applicant made some payments on the loans in 2013 in an effort to help his stepdaughter reinstate her loans to active status. He only ceased making payments on the loans in September 2013 after receiving oral guidance from a lender representative to suspend his payments while the lender conducted its own internal investigation of the correct principal and accumulated interest owing on the loans. He is still awaiting the results of this investigation.

Since suspending his loan payments in September 2013, Applicant's stepdaughter has made numerous oral requests for a historical accounting without success. Albeit, they were able to obtain an on-line credit summary of their six outstanding loans in September 2014. Applicant and his stepdaughter consider these

summaries to be inadequate. Besides looking to the lender for accounting updates, Applicant's stepdaughter retained legal counsel to help obtain a responsive accounting of the aggregate loan balances on each of her six outstanding loans (inclusive of the three at issue). She and Applicant are still waiting for a response to her counsel's inquiries and her own oral requests. MC ¶ 20(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," is applicable to Applicant's situation.

Considering the totality of Applicant's own payment initiatives and efforts to obtain an accurate historical accounting of the loans in issue, his efforts were responsible and enough to satisfy the second prong of MC ¶ 20(b). Accordingly, MC ¶ 20(b), while still not dispositive, is fully applicable.

The verbal inquiries of Applicant and his stepdaughter, together with the retainer of legal counsel to obtain updated accountings of the loans are both substantive and credible and reflect earnest effort to obtain accurate historical accountings of the loans in issue. Their collective efforts are sufficient to enable them to satisfy Applicant's evidentiary burdens under all of the facts and circumstances considered. Since their retainer of counsel, Applicant and his stepdaughter have not received any updated responses from their lender, or follow-up progress reports from their retained counsel. They have shown enough good-faith and diligence in addressing the loans in issue and seeking clarifications of the amounts owing to meet their own mitigation burdens. Mitigation of the three charged-off student loans in dispute is demonstrated.

Applicant's only other listed debt is a delinquent medical debt for \$180 owed to creditor 1.d. Applicant documented his payment of this debt and is entitled to the mitigation benefit of MC ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."

From a whole-person standpoint, Applicant has provided some documentation of his joint disputes of the balances owing on the three student loans in issue. His credit report reveals that he is current with all of his other accounts and is otherwise financially stable. Both his payment history and dispute initiatives bear the strength needed to qualify as good-faith payment efforts and reasonable disputes necessary to meet minimum clearance eligibility requirements.

Considering all of the circumstances surrounding Applicant's payment history and his disputes of the student loans he co-signed for on behalf of his stepdaughter, his actions to date in addressing his finances are sufficient to meet mitigation requirements imposed by the guideline governing his finances. Favorable conclusions are warranted with respect to the allegations covered by Guideline F.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparas. 1.a-1.d:

For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

Roger C. Wesley
Administrative Judge

