



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01153

Appearances

For Government: Ray Blank, Esq., Department Counsel

For Applicant: *Pro se*

03/24/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, but he refuted the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 7, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 effective for SORs issued after September 1, 2006.

Applicant answered the SOR on December 21, 2015, and elected to have his case decided on the written record. On May 12, 2016, Department Counsel submitted the Government's file of relevant material (FORM). Applicant received the Form on May

13, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence. The Government's documents identified as Items 1 through 8 are admitted into evidence. Applicant provided documents that are marked as Items A and B, which are admitted into evidence without objection.¹ The case was assigned to me on March 20, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and denied the allegation in SOR ¶ 2.a. He also provided amplifying comments in an attached statement to his Answer. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He graduated from high school in 1976 and obtained a certificate in 2002 from a technical school. He is married and has two grown sons, and one grown stepson. He has been employed by a federal contractor since May 2006. He reports a previous top secret clearance granted in 2009.

The SOR alleges two charged-off student loan debts totaling about \$74,485; and one allegation that Applicant falsified section 26 of the Questionnaire for National Security Positions/SF-86 or Security Clearance Application (SCA) that he submitted by failing to disclose both delinquent student loans, which he had co-signed with his son. His son obtained these two student loans in May of 2005 to attend college. Credit reports from June 2014, November 2015, and May 2016 verify both debts.² The student loans alleged in SOR ¶¶ 1.a (\$61,819) and 1.b (\$12,666) were opened in 2005. The credit bureau reports reflect that the last payments made on both loans were in September 2010 and they were charged off in January 2011.

Applicant stated in his Response to the FORM he believed the student loans were the responsibility of his son. Applicant's son did not alert Applicant when the son fell behind on payments.³ Applicant contends in his Response to the FORM that he only became aware of the delinquent loans when he was "confronted by the auditor in August 2014".⁴ Yet, in his letter attached to his Answer to the SOR, he states that he found out that these accounts were more than 120 days past due while he was looking to buy a house. There is no indication when this occurred, but the last payments on the student loans were made in September 2010. "I then in turn made some payments to help my son catch up."⁵ Thus, it appears that Applicant was aware of these

¹ Comprised of a one-page letter from his son and another one page letter from Applicant himself.

² Items 5, 6 and 7.

³ One-page letter dated May 30, 2016, signed by son and attached to Response to Form.

⁴ One-page letter dated June 6, 2016, signed by Applicant and attached to his Response to Form.

⁵ Item 2.

problematical loans before he completed his SCA in May 2014. Applicant also stated “I have more than \$125,000.00 combined in my savings and 401k accounts” and “not listing and not fully knowing what ‘charged off’ account meant, was my fault. I will begin the process to do what I can about this debt.”⁶ No additional evidence was offered to corroborate Applicant’s claim that he made six or seven catch-up payments on behalf of his son, or more recent efforts to resolve these debts.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions 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, these guidelines are applied 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

⁶ Item 2.

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹¹

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

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

Applicant is responsible for student loan debts for which he co-signed in 2005. The delinquencies began accumulating in 2010 and remain unresolved. Applicant claims that he actually made six or seven payments to get these loans back on track when his son fell behind. No corroboration has been offered for these supposed payments. There is sufficient evidence to support the application of the above disqualifying conditions.

¹¹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and,
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant repeatedly stated he thought the student loans were his son's responsibility, despite the fact that Applicant co-signed for the student loans and agreed to be responsible for these debts if necessary. His son's financial problems were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under the circumstances. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) does not apply. There have been no recent payments on these student loans according to the credit bureau reports. Without additional evidence, there are no indications that Applicant's financial problems are under control. AG ¶ 20(c) does not apply.

Applicant has provided no evidence of his current financial situation except to say that he has \$125,000 in his savings/401k account. Thus, he appears to have adequate financial means to pay down these delinquent student loans. Yet, he has provided no evidence of following through on his stated commitment to resolve the issues with these delinquencies. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address his delinquent debts casts doubt upon his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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.

Since Applicant denied any intent to provide false information on his SCA, his intent is an issue. Pursuant to ¶ E3.1.14 of DOD Directive 5220.6, the Government is responsible for presenting witnesses and evidence on facts alleged in the SOR that have been controverted. Intent can be inferred or determined from the circumstances. Applicant knowingly co-signed for his son's student loans. Applicant noted in his Answer to the SOR that he found out about these delinquent student loans when he was looking to buy a house. He does not state when that occurred. He claims he took measures to bring the loans current, albeit temporarily, by making six or seven payments. It is not clear when. Yet, he did not later verify the status of these loans, while completing his SCA some four years later. While this lack of due diligence may have been negligent, it does not show the specific intent necessary to find deliberate falsification of the SCA.

Based on the present record, there is insufficient evidence to find that he knew he had debts that were more than 120 days delinquent at the time when he completed his SCA. It is reasonable that Applicant may have believed that because he made some payments on the student loans to bring them current at one point, that they no longer were in a delinquent status. There is insufficient evidence to conclude he deliberately failed to disclose his financial delinquencies. Therefore, the above disqualifying condition is not established

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

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. I have incorporated my comments under Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant's finances remain a security concern. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations, but he did refute the security concerns arising under Guideline E.

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
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2 Guideline E	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge