



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



In the matter of:

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ISCR Case No. 15-01694

Applicant for Security Clearance

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel

For Applicant: *Pro se*

10/31/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant owes approximately \$132,000 in defaulted private student loan debt. He has been making timely payments on his federal student loans obtained for \$32,500, and he has made some payments toward one of his private student loans in response to court action. The financial considerations concerns are not adequately mitigated. Clearance is denied.

Statement of the Case

On September 1, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action 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 (AG) effective within the DOD on September 1, 2006.

On September 18, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 23, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On February 25, 2016, I scheduled a hearing for March 23, 2016.

I convened the hearing as scheduled. Five Government exhibits (GEs 1-5) and two Applicant exhibits (AEs A-B) were admitted into evidence without objection. Applicant and a witness testified, as reflected in a transcript (Tr.) received on April 1, 2016.

I held the record open until April 14, 2016, for post-hearing submissions from Applicant. On April 5, 2016, Applicant submitted a statement by email, which he later clarified on April 12, 2016. The emails were collectively marked and admitted without objection as AE C. The record closed on April 14, 2016, without any further submissions from Applicant.

Findings of Fact

The SOR alleges under Guideline F that Applicant owes collection debts of \$40,523 (SOR ¶ 1.a), \$19,585 (SOR ¶ 1.c), \$242 (SOR ¶ 1.f), and \$26,971 (SOR ¶ 1.g) and charged-off debts of \$28,100 (SOR ¶ 1.b) and \$18,675 (SOR ¶ 1.d). When he answered the SOR, Applicant denied the alleged \$242 medical debt in SOR ¶ 1.f. He admitted the remaining debts without explanation.

After considering the pleadings, exhibits, and transcript, I find that SOR ¶¶ 1.b and 1.g are the same debt. The account numbers are the same. Additional findings of fact follow.

Applicant is a 29-year-old college graduate, who has been working for a defense contractor since late March 2014. He seeks his first DOD security clearance. (GE 1; AE B.)

Financial

Applicant attended college from August 2006 to May 2010. (GE 1.) He earned his bachelor's degree in information technology. (Tr. 26.) He paid for his studies in part with student loans. Between August 2006 and August 2009, he obtained federal student loans of \$34,125. He also took on private student loans of \$21,300 (SOR ¶ 1.a), \$24,671 (SOR ¶ 1.b and ¶ 1.g), \$19,585 (SOR ¶ 1.c), \$14,915 (SOR ¶ 1.d), and \$14,865 (SOR ¶ 1.e). (GEs 3-4.) His mother completed and filed his loan applications for him electronically, and he was unaware of his total student loan debt. (Tr. 22-23.)

Applicant worked as a part-time security guard the summer after he graduated from college. From October 2010 to March 2012, he was employed as a customer service representative for a company. (GE 1; Tr. 28.) Applicant's federal student loans were income based, so he was able to consolidate them for \$37,415 in January 2011 and make

timely payments. His income was insufficient to make payments on his private student loans when they came due out of deferment in late 2010, and he defaulted on those loans. (Tr. 19-20.)

Applicant was working 40-50 hours a week earning \$11.50-\$11.90 an hour and living with his parents. When his parents moved in April 2011, Applicant had to rent an apartment. He cohabited with his then girlfriend to reduce expenses, but their relationship ended after eight or nine months. (GE 1; Tr. 19.) He moved in with his brother, who was living in their parents' home. Applicant and his brother split the \$1,200 monthly mortgage payment. (Tr. 19-20, 28.)

Applicant was employed full time as a customer account representative for about a year when he resigned in May 2013 following notice of unsatisfactory performance. His compensation was based on commission, and he was not meeting monthly sales quotas. (GEs 1, 5.)

Applicant then worked as a mail handler from May 2013 to November 2013. In October 2013, he began a cohabitant relationship, and he and his girlfriend moved to a new locale where they shared an apartment, splitting their monthly rent of \$1,075.¹ (GE 1; Tr. 29.) He was placed by a staffing agency in a contract position for his employer earning \$13 an hour. In March 2014, he became a direct hire at an hourly wage of \$16.30. (Tr. 20.) Needing a security clearance for his duties, he completed and certified to the accuracy of a Questionnaire for National Security Positions. In response to a financial record inquiry concerning any delinquency involving enforcement in the last seven years, Applicant indicated that court action had been taken against him by the creditor in SOR ¶ 1.e for about \$23,000 in student loan debt, but that the matter had been resolved and that he was making monthly payments. He disclosed no other financial issues. (GE 1.)

As of May 15, 2014, Applicant's federal student loans were rated as current with a balance of \$37,775. The private student loan in SOR ¶ 1.g had been placed in collection because of nonpayment since February 2011. A second loan with the lender of \$21,300 had been charged off and placed in collection, possibly with the lender in SOR ¶ 1.a. The credit bureaus reported that his student loan in SOR ¶ 1.c was in collection for \$19,585. His student loan in SOR ¶ 1.d was in collection with a past-due balance of \$18,675. His loan in SOR ¶ 1.e had a collection balance of \$22,851. A medical debt of \$242 from May 2011 was also in collection (SOR ¶ 1.f). Applicant testified that he now believes that it might be a hospital bill, but he is not certain. (Tr. 31-32.) (GE 4.)

On May 28, 2014, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about his previously disclosed student loan (SOR ¶ 1.e). Applicant indicated that he started repaying the debt in April 2014 in no set amount. He pays what he can afford. He explained that he fell behind on payments originally because of insufficient income. When confronted, Applicant did not dispute that he also

¹ Applicant testified that he and his girlfriend began living together in their current apartment in October 2014 [sic]. (Tr. 29.) He reported on his e-QIP in April 2014 that they began cohabiting in their current apartment in October 2013. (GE 1.)

owed the student loan debt in SOR ¶ 1.g (same debt in SOR ¶ 1.b). He admitted taking on the debt around 2007 or 2008, but he was not certain about the current balance or past due amount. He indicated that he would satisfy all current and future debts. (GE 5.)

As of November 2014, Applicant had delinquent student loan accounts on his credit report with outstanding balances of \$40,523 (SOR ¶ 1.a), \$28,100 (SOR ¶¶ 1.b and 1.g), \$19,585 (SOR ¶ 1.c), and \$18,675 (SOR ¶ 1.d). His student loan account in SOR ¶ 1.e showed a zero balance after it had been sold. Applicant's cousin was making timely payments of \$309 per month on a car loan Applicant obtained in June 2011 for \$13,686 (balance \$7,743). Applicant's cousin took the car and assumed responsibility for the payments around the fall of 2012 when Applicant could no longer afford the car. (Tr. 29-30, 44.) Applicant was making the monthly minimum payments on five credit cards with balances totaling \$3,865. (GE 3.)

As of December 2015, Equifax was reporting three delinquent student loans. Applicant was past due \$8,589 on his student loan in SOR ¶ 1.b (same debt in SOR ¶ 1.g) on an outstanding balance of \$30,523. The \$19,585 balance of SOR ¶ 1.c was reported to have been in collection since December 2013. The \$18,675 student loan in SOR ¶ 1.d had a last payment of April 2011. Applicant's consolidated federal student loan with a balance of \$37,775 was rated as current with a monthly scheduled payment of \$188. (GE 2.) Applicant pays \$59 toward his federal student loans every two weeks. (Tr. 43.) His credit card accounts were rated as current with an aggregate balance of \$5,269. His cousin had paid down Applicant's car loan to \$4,961. (GE 2.)

Applicant testified that he has been making payments of \$107 a month toward one of the two student loans held by the creditor identified in SOR ¶ 1.c and ¶ 1.e.² (Tr. 21, 33, 37.) Applicant presented no documentation showing his payments, although evidence suggests that he began repaying the loan in SOR ¶ 1.e in April 2014. (GE 1.) In addition to his \$118 monthly federal student loan payment, Applicant pays almost \$540 in rent, \$150 for cable services, and \$150 for his cell phone each month. (Tr. 35.) As of March 2016, Applicant was driving an older model vehicle. He sold another car for \$1,800, which covered the cost of the vehicle he acquired at an auction. (Tr. 44.) Applicant indicated in April 2016 that he hopes to continue to chip away at his student loan debt. A security clearance is very important to him and his future with his employer. (AE C.)

² Neither the student loan in SOR ¶ 1.e nor the collection agency identified by Applicant appears on Applicant's credit record as of December 2015. His credit report shows the student loan in SOR ¶ 1.c with a collection balance of \$19,585. (GE 2.)

Work and Character References

A longtime friend of Applicant's parents testified to his belief that Applicant would not have been able to afford college without student loans. Applicant's father was a chef and his mother worked in human services. (Tr. 59-60.) Applicant's witness, who previously worked in city government, believes that given the opportunity, Applicant will address his student loans. Applicant has a record of civic engagement since he was a junior in college. Applicant has aided charitable activities for low-income residents and advised at-risk youth against gang involvement. He found Applicant to be honest, trustworthy, and focused. (Tr. 51-60.)

Applicant proved to be a quick learner and valuable contributor to his defense contractor employer. He has received at least five impact awards from his employer. He was recognized in April 2014 for professional and persistent support to security personnel; in April 2015 for being part of a total team effort to insure customer deliveries; in June 2015 for outstanding performance, teamwork, and dedication to the logistics department; in August 2015 for going "above and beyond" to ensure that a program met its monthly customer commitments; and in September 2015 for outstanding performance and dedication in several aspects with professionalism, patience, and initiative. (AE A.)

Applicant's manager gave him a rating of "high performance" for his hard work and dedication in 2015. Citing Applicant's receipt of several impact awards, the manager commented in Applicant's annual review that he had nothing but good reviews and praise for Applicant's work ethic and ability to perform his job. The need for Applicant to pursue a security clearance was specifically noted in his review. (AE B.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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. 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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 concerns about financial considerations are set forth 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 evidence establishes that Applicant obtained federal and private student loans for college between August 2006 and August 2009. When his federal student loans came out of deferment, he consolidated them for \$37,415 in January 2011. He has been making timely payments on his federal student loan, but his private student loans became seriously delinquent and are charged off or in collection status. A comparatively small medical debt of \$242 (SOR ¶ 1.f) from May 2011 was also reportedly in collection. Applicant does not recognize the debt, but the DOHA Appeal Board has held that a credit report can be sufficient to meet the substantial evidence standard for the government’s burden of producing evidence of alleged delinquent debts. See ISCR 14-03612 (App. Bd. Aug. 2015). Security concerns arise because of Applicant’s defaulted private student loans and his lack of knowledge about those financial obligations. At his security clearance hearing, he was unaware of his private student loan balances or who currently holds the debts. He had

started paying \$107 a month to a collection agency, but could not identify which of the two accounts (SOR ¶¶ 1.c or 1.e) was being repaid. Two disqualifying conditions, AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Mitigating condition AG ¶ 20(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,” cannot reasonably apply. Although he obtained the student loans more than five years ago, his default is ongoing with respect to his private student loans, excepting perhaps the loan (likely SOR ¶ 1.e) on which he made some payment after the creditor brought him to court. Applicant indicated on his e-QIP that the lender brought a judgment claim against him in court for nonpayment of a \$23,000 balance, but that the matter was resolved in April 2014 in that he now makes monthly payments.

AG ¶ 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,” has some applicability in that his student loans can be attributed in substantial part to insufficient income. When his private student loans came out of deferment, Applicant was living with his parents, but he was earning only \$11.50-\$11.90 an hour. He was unable to find a job in his degree field. In April 2011, rent understandably took priority, although he exacerbated his financial stress by taking on a car loan in June 2011. In February 2012, Applicant moved back into his parents’ home, and his brother counted on him to pay half of their parents’ \$1,200 monthly mortgage payment. Applicant began working in a commission-based job in April 2012, but he failed to meet sales quotas so he did not earn enough to pay his student loans. In October 2013, Applicant was placed as a contract employee with his present employer at \$13 an hour. When he became a direct hire of the company in late March 2014, his hourly wage increased to only \$16.50, although his cousin had already taken over his car payment, so he should have been in a better position financially to address his student loans.

Applicant has been repaying his federal student loans at \$59 every two weeks since his latest deferment ended. Around April 2014, he commenced repayment of his private student loan in SOR ¶ 1.e after the creditor sought a judgment. He told an OPM investigator that he was required to make monthly payments in no set amount. I held the record open after Applicant’s security clearance hearing for him to provide documentation that could shed light on the amounts and dates of payments for that debt and on the balances of his other private student loans in default. In April 2016, Applicant confirmed that the collection debt in SOR ¶ 1.a was an updated collection balance of one of the student loans obtained from the lender identified in SOR ¶ 1.g. He also indicated that he was currently paying what he could afford toward his student loans, and he expressed his “hope” to be able to continue to chip away at his debt. Some consideration is warranted of both AG ¶ 20(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 AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise

resolve debts,” assuming as he testified that he has made some payments on the private student loan in SOR ¶ 1.e. However, Applicant has not presented a personal budget or other financial information from which I could reasonably conclude that he is doing what he can within his means to address his student loan debt. It is difficult to find that Applicant has acted responsibly with regard to the student loans in SOR ¶¶ 1.a-1.d without proof of reasonable and necessary expenses that could justify his ongoing inattention to those debts. He indicated that he was paying \$150 for cable and \$150 for his cell phone. Both expenses are difficult to justify when he is making no effort toward resolving the student loans in SOR ¶¶ 1.a-1.d. The financial considerations concerns are not fully mitigated under the adjudicative guidelines.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).³ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

The DOHA Appeal Board has held that an applicant is not required to establish that he has paid each debt in the SOR, or even that the first debts paid be those in the SOR. However, an applicant needs to show that he has a plan to resolve his debts and that he has taken significant steps to implement his plan. See ISCR 07-06482 (App. Bd. May 21, 2008). Applicant has not been sufficiently proactive about resolving the issues of concern to the DOD. He understands that he is legally liable for repayment of student loans obtained in his name by his mother and yet has not educated himself about his private student loans. His outstanding performance at work for the defense contractor and his civic involvement weigh in his favor. Yet, it is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). Perhaps at some future date, Applicant may be able to rehabilitate his student loans to where their status no longer presents an unacceptable security risk. After considering all the facts and circumstances, it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

³ The factors under AG ¶ 2(a) are as follows:

(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.

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.f: Against Applicant

Subparagraph 1.g: For Applicant⁴

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.

Elizabeth M. Matchinski
Administrative Judge

⁴ SOR ¶ 1.g is found for Applicant because it is the same debt as alleged in SOR ¶ 1.b and does not represent an additional debt.