



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



In the matter of:

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ISCR Case No: 15-05725

Applicant for Security Clearance

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

02/22/2017

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial security concerns raised as a result of delinquent debts, including a large amount of unresolved student loans. He mitigated the personal conduct security concerns related to his failure to disclose the student loan delinquencies in his security clearance application. Eligibility for access to classified information is denied.

Statement of the Case

On October 14, 2014, Applicant submitted an electronic Questionnaire for Investigations Processing Investigation Request (e-QIP), as part of an investigation for a security clearance. On March 16, 2016, the Department of Defense (DOD) issued 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 for Determining Eligibility for Access to Classified Information* effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on May 17, 2016, and requested a hearing before an administrative judge. On September 8, 2016, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On October 19, 2016, DOHA issued a Notice of Hearing setting the case for November 15, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) A, and 1 through 11 into evidence without objection. DOHA received the hearing transcript (Tr.) on November 23, 2016. The record remained open until December 19, 2016, to give Applicant an opportunity to submit additional evidence, which he did not do.

Findings of Fact

Applicant admitted all allegations contained in SOR ¶¶ 1.a through 1.m, and denied the allegation in SOR ¶ 2.a. His admissions are incorporated herein.

Applicant is 32 years old and divorced, since October 2013, after five years of marriage. He has a four-year-old child from that marriage. He served in the U.S. Marine Corps Reserves from 2004 through 2012, and deployed to the Middle East from 2006 to 2007. He was a sergeant, paygrade E-5, when he was honorably discharged. He held a security clearance while serving. In 2012, he earned a bachelor's degree. (Tr. 17-19; GE 1.)

Currently, Applicant is working for a real estate company. Prior to this job, he worked for the federal government in different positions for several years. He has also worked as a volunteer with at-risk youth organizations. (Tr. 19-21; GE 2.)

Applicant's financial problems began when he and his wife divorced in 2013, during which time his house flooded, and he had to make numerous repairs in order to sell it as part of the divorce process. He said that this period was emotionally difficult for him and affected his ability to manage finances. (Tr. 41.)

Based on credit bureau reports (CBR) from November 2014, January 2016, and July 2016, the SOR alleged 13 delinquent debts, totaling \$63,321. Eight of those delinquent debts are student loans that total \$51,162. The status of each debt is as follows:

1. (SOR ¶ 1.a) The \$227 judgment entered in June 2015 is owed to a former landlord. Applicant paid \$100 to the creditor when he learned of the judgment after it was entered. He has not made any additional payments. (Tr. 24-25.) It is unresolved.

2. (SOR ¶ 1.b) The \$150 medical debt is unpaid. Applicant said that he has not had enough money to pay it. (Tr. 25.)
3. (SOR ¶ 1.c) The \$207 medical debt is unpaid. Applicant said that he has not had enough money to pay it, although he thinks he may have paid this bill. (Tr. 25.)
4. (SOR ¶¶ 1.d through 1.k) These eight student loans became due during the time that Applicant was going through his divorce in 2013. In early 2014, he said he began making monthly payments of \$50 to \$150 to the creditors. He did not have documentation indicating how many payments he made to date, but documented payments from February through June 2016. He said he started transitioning his student loans to another company in August 2016 and negotiated a Forbearance Agreement (FA) with that company, which will suspend past-due payments and allow him to resume monthly payments of \$50 to \$150. He recently received the FA,¹ but said he did not have time to return an executed copy to the company before his hearing date. As of November 2016, the FA records an account balance of \$62,100, with a past-due amount of \$3,084. (Tr. 28-30; AE 1, 6.)
5. (SOR ¶ 1.l) The \$1,129 credit card debt is unresolved. Applicant said he paid it sporadically. It became a judgment in September 2016. He said he cannot afford the payments. (Tr. 32-33.)
6. (SOR ¶ 1.m) The \$2,446, owed to a state for child support, is being resolved through automatic deductions from Applicant's salary. His monthly payments of \$849 cover current child support and arrears. The arrears balance is \$3,900. (Tr. 22-23; AE 6, 10.)

Applicant's annual salary is about \$42,000. He submitted his budget. His net monthly income, after deducting taxes and child support, is \$1,688, and his expenses are \$1,515, leaving little remaining for other bills. However, he said his automobile loan would be paid off this month, adding another \$260 to his budget. (Tr. 33-34; AE 8, 11.)

Applicant said he owes unpaid state and federal taxes for 2015. He does not know the amount.² (Tr. 34-36.)

When he completed his October 2014 e-QIP, Applicant failed to disclose his delinquent federal student loans. While testifying, he said that at time of investigation he was unaware of the delinquent status of his debts, including his student loans. He said

¹ This Forbearance Agreement is dated October 21, 2016.

²Applicant's unpaid taxes for 2015 were not alleged in the SOR and will not be considered as a disqualifying condition. However, said facts may be considered in determining the applicability of mitigating conditions, and analysis of the whole-person and Applicant's credibility.

he filled it out truthfully. (Tr. 31-32, 40.) He disclosed his unpaid child support issues in the e-QIP. (GE 1.)

Applicant submitted a letter of recommendation from a Marine officer with whom he served. The officer said that he has never had doubts about Applicant's loyalty or judgment. He has witnessed Applicant's selfless service and trustworthiness. (AE 7.)

Policies

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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 AG ¶ 2(a), describing 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.³

AG ¶ 19 sets out two disqualifying conditions that could potentially raise security concerns in this case:

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

Applicant has a history of not satisfying his debts that began in 2012 and continues into the present. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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

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

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's financial problems are ongoing. Hence, AG ¶ 20(a) does not apply. Applicant established some mitigation under AG ¶ 20(b), as there is sufficient evidence that Applicant's financial delinquencies developed during and subsequent to his 2013 divorce proceedings, which were circumstances beyond his control. There is insufficient evidence demonstrating that he attempted to responsibly manage the delinquent debts during that period, which is necessary to establish full mitigation under this condition.

Applicant has not participated in financial or credit counseling, but has established some evidence to support the application of AG ¶ 20(c). He is resolving his child support issues and the situation is slowly coming under control. He is close to bringing his student loans, which comprise the majority of the SOR-alleged debts, into a forbearance status. Those actions also establish limited mitigation under AG ¶ 20(d). Four debts remain unresolved or unaddressed, as do his 2015 income taxes.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to 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.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying in this case:

(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 denied that he intentionally omitted information about his delinquent student loans when he completed his e-QIP. When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred.⁴

Applicant asserted that he did not deliberately withhold information about the loans, but was unaware of their delinquent status at the time. Based on the disclosure of his delinquent child support payments, and his testimony and demeanor, I find that his explanation for this omission is credible. The evidence does not establish a deliberate falsification. Hence, a discussion of mitigating conditions is not necessary.

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). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a 32-year-old man, who honorably served in the Marine Corps Reserves for eight years, and deployed to the Middle East for one year. A former Marine colleague attests to Applicant's reliability and trustworthiness. In 2012, Applicant completed a bachelor's degree. He has been

⁴See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

steadily employed for several years, albeit not in high paying positions. Those are positive factors in this case. However, since his divorce in 2013, he has been unable to adequately manage his finances or delinquent debts. Although he is resolving his child support obligations, he only recently negotiated a FA to manage his \$63,000 of student loans, and had not made a payment on it by the time the record closed. There are also ongoing concerns related to his outstanding 2015 taxes and four other debts, which have not been addressed. He has demonstrated that he started taking steps to resolve his debts, but he has not yet established a reliable track record of managing his finances and debts. Overall, the record evidence leaves me with some questions as to Applicant's eligibility and suitability for a security clearance at this time. Based on the record evidence, I conclude Applicant mitigated the personal conduct security concerns, but failed to fully mitigate the security concerns arising under the financial considerations guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.l:	Against Applicant
Subparagraph 1.m:	For 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge