



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



In the matter of:)	
)	
(Redacted))	ISCR Case No. 15-08613
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

07/26/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant is in default of approximately \$46,070 in student loan debt and \$1,711 in consumer debt. Eight months of unemployment from August 2014 to March 2015 compromised his finances, but there is no evidence of any efforts by Applicant to address his delinquencies. Clearance is denied.

Statement of the Case

On May 17, 2016, 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 (EO) 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* (AG) effective within the DOD on September 1, 2006.

On June 6, 2016, Applicant answered the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On August 3, 2016, the Government submitted a File of Relevant Material (FORM), consisting of five exhibits (Items 1 through 5). DOHA forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on August 12, 2016. He submitted no response by the September 11, 2016 deadline for comment and rebuttal evidence. On June 1, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Findings of Fact

The SOR alleges under Guideline F that, as of May 17, 2016, Applicant was in default on \$43,954 in student loan debt (SOR ¶¶ 1.a-1.g) and delinquent on six other accounts totaling \$1,711 (SOR ¶¶ 1.h-1.m). When he answered the SOR (Item 2), Applicant admitted all the debts without explanation. His admissions to the delinquencies are incorporated as findings of fact. After considering the FORM, which includes Applicant's response to the allegations as Item 2, I make the following additional findings of fact.

Applicant is 35 years old and has never been married. Born abroad, he immigrated to the United States as a young child in 1983. He became a U.S. naturalized citizen in May 2014 on his own application. He has worked in the sheet metal trade for a defense contractor since March 2015. (Item 3.)

Applicant worked as a laborer from September 2003 to August 2008. During his last 18 months in that job, he attended a technical institute and became a certified automotive technician in August 2008. (Item 3.) Between June 2007 and May 2008, Applicant obtained student loans totaling \$37,688 (SOR ¶¶ 1.a-1.g). (Item 4.)

Applicant continued to work as a laborer for a year after he finished his technical training. From August 2009 to July 2014, Applicant was employed full time as an automotive technician for a succession of three car dealerships. (Item 3.) He defaulted on his student loans despite his full-time employments. In December 2010, the student loan in SOR ¶ 1.a was charged off for \$15,062. Applicant's other student loans had been 120 days or more past due from October 2012 through March 2013 and from October 2013 through

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

July 2014 when they were transferred to the government for collection (SOR ¶¶ 1.b-1.g) with a total balance of \$22,630. Applicant also stopped paying on some of his consumer credit obligations. A credit card debt of \$482 was in collection as of July 2013 (SOR ¶ 1.h). In 2014, a \$606 telephone service debt from June 2012 (SOR ¶ 1.i), a \$256 satellite television debt from May 2013 (SOR ¶ 1.j), and two insurance debts of \$131 from April 2014 (SOR ¶ 1.k) and \$110 from July 2014 (SOR ¶ 1.m), were placed for collection. A wireless telephone debt of \$126 from December 2010 went unpaid (SOR ¶ 1.l). (Item 4.)

Applicant was laid off in August 2014. He was unemployed for eight months until March 2015, when he was hired by a defense contractor. On March 25, 2015, he completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to financial record inquiries concerning delinquency involving routine accounts, Applicant listed the defaulted student loan in SOR ¶ 1.a, which he indicated was in collections for \$14,500 because the payment was too high; the credit card delinquency in SOR ¶ 1.h for lack of funds; and two of six student loans (SOR ¶¶ 1.b and 1.g) in collection with the government. Applicant admitted that he had not yet taken any action to address those debts. (Item 3.)

As of April 9, 2015, Applicant's credit report showed that he owed \$14,550 on the student loan in SOR ¶ 1.a, a total of \$28,892 on the loans assigned to the government for collection, and \$482 on the credit card listed on his SF 86. His credit report also revealed some unreported collection debts totaling \$1,229 (SOR ¶¶ 1.i-1.m). Applicant had no other outstanding debt on his credit record. He paid off a \$29,476 joint car loan in October 2014. His \$749 monthly car payments were late 30 to 60 days between November 2008 and January 2009, but for the most part he made his payments on time. (Item 4.)

On August 2, 2016, Applicant was \$7,352 past due on the student loan in SOR ¶ 1.a, which had a balance of \$16,117. His other student loans had been placed for collection in July 2015 with the creditor in SOR ¶ 1.a with the following balances: \$8,406 (SOR ¶ 1.b, \$1,178 past due); \$7,136 (SOR ¶ 1.c, \$1,000 past due); \$6,661 (SOR ¶ 1.d, \$933 past due); \$4,995 (SOR ¶ 1.e, \$700 past due); \$1,427 (SOR ¶ 1.f, \$200 past due); and \$1,328 (SOR ¶ 1.g, \$186 past due). Applicant had made no payments on his student loans to the creditor, including on the loans in SOR ¶¶ 1.f and 1.g, on which the scheduled monthly payments were only \$18 and \$16. He had also not made any progress on the credit card delinquency in SOR ¶ 1.h. Applicant was an authorized user on a revolving credit card account opened in June 2015. The account was rated as current with a \$1,775 balance. He had opened no new credit card accounts in his name. (Item 5.)

The FORM contains no information about Applicant's income from any of his employments or about whether he collected unemployment compensation during part or all of the eight months that he was out of work. As of March 2015, Applicant was in a cohabitant relationship that began in August 2008. (Item 3.) He was still renting at the same address when he responded to the FORM in August 2016.

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(a), 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 national security eligibility will be resolved in favor of the 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 EO 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 articulated in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government met its burden of establishing a *prima facie* case for disqualification because Applicant defaulted on his student loans and on some consumer debts. As of April 2015, he owed \$43,442 in student loan debt and \$1,711 in consumer debts (one credit card debt, two phone debts, two insurance debts, and one satellite television debt) that had been charged off or placed for collection. By August 2016, his student loan debt had accrued to \$46,070. Two of his student loans had small repayment terms of only \$16 and \$18 monthly and yet he made no payments. Three disqualifying conditions under AG ¶ 19 are implicated: AG ¶ 19(a), "inability to satisfy debts;" AG ¶ 19(b), "unwillingness to satisfy debts regardless of the ability to do so," and AG ¶ 19(c), "a history of not meeting financial obligations."

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. Applicant's ongoing disregard of his delinquencies constitutes a persistent pattern of poor financial judgment.

Applicant's job layoff and subsequent unemployment from August 2014 until late March 2015 are circumstances that could be mitigating under AG ¶ 20(b), which provides:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

However, available information shows that Applicant was already in default of his student loans before he lost his job in the automotive industry. His student loan in SOR ¶ 1.a was charged off for \$15,062 in December 2010. Available credit information shows that his other student loans have been delinquent since July 2013, more than a year before he was unemployed. His phone debt in SOR ¶ 1.i is from June 2012. His satellite television debt in SOR ¶ 1.j is from May 2013. His insurance debts in SOR ¶¶ 1.k and 1.m went to collections in April 2014 and July 2014. His wireless phone debt in SOR ¶ 1.l was not assigned for collection until January 2015, but it first became delinquent in December 2010. AG ¶ 20(b) is mitigating only of Applicant's failure to make any payments toward his past-due debts while he was unemployed and for a brief period after he gained full-time employment to reestablish himself financially. Applicant did not act responsibly within AG ¶ 20(b) when he had yet to take steps to address his delinquencies 17 to 18 months after he began working for his defense contractor employer. Furthermore, neither AG ¶ 20(c), "the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control," nor AG ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts." In considering AG ¶ 20(d), I cannot ignore Appeal Board precedent, which requires that "a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."² Applicant did not provide any information about his monthly income or expenses that could perhaps have mitigated some of the security concerns raised by his disregard of his past-due debts. The financial considerations security concerns are not mitigated without credible evidence of attempts by Applicant to rehabilitate his student loans and arrange for repayment of his consumer debts in collection.

Whole-Person Concept

In assessing the whole person, 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(d).³ The analysis under Guideline F is incorporated in my whole-

² The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

³ The factors under AG ¶ 2(d) 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

person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has the burden of presenting evidence of relevant facts and circumstances to show why he should be granted security clearance eligibility notwithstanding the delinquent debt information on his credit record. He chose to rely on the written record. It is not enough in mitigation to assert on his SF 86 that he either lacked the funds or that his student loan payment was too high but then provide no detail about his income or expenses. He was given an opportunity to supplement the record in response to the Government's FORM and elected not to respond. 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.) Applicant's candor on his SF 86 about his financial difficulties weighs in his favor. Yet, based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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, Financial Considerations: Against Applicant

Subparagraphs 1.a-1.m: Against Applicant

Conclusion

In light of all of the circumstances, 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

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.