



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



In the matter of:)
)
-----) ISCR Case No. 16-03103
)
Applicant for Security Clearance)

Appearances

For Government: Roy T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

03/01/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On November 16, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ In a response signed on February 25, 2017, he admitted all allegations under Guideline F and denied the sole allegation raised under Guideline E. On May 4, 2017, the Government issued a File of Relevant Material (FORM) with nine attachments (“Items”). Applicant timely responded to the FORM. The Government had no objection to his response and marked one of his attachments as FORM, Item 8. The case was assigned to me on October 1, 2017. Based on my review of the record as a whole, I find Applicant failed to mitigate financial considerations security concerns.

¹ 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 (AG) effective within the DOD on or after September 1, 2006. Since that time, the AG has been revised for any adjudication on or after June 8, 2017. The revised AG are applied here.

Findings of Fact

Applicant is a 36-year-old diver who has worked for the same defense contractor since July 2014. His work includes extensive time at sea, away from his home. He experienced a period of unemployment between July 2012 and January 2013, after which he found work with the United States Army as a test officer. Before that, he served in the Army National Guard from 2001 to 2007, when he was honorably discharged. Applicant is single and has no children. He earned a bachelor's degree in 2011 and an advanced certification the following year. He has previously maintained a security clearance.

At issue are 14 delinquent student loan debts, with balances amounting to about \$65,000. (SOR allegations 1.a-1.m) Applicant admits responsibility for all the delinquent accounts cited. He attributes their origin to the time when he was in college (2007 or 2008-2011) and when he pursued a post-graduate certificate (2011-2012).² Regarding these delinquent student loan accounts, Applicant wrote:

Upon receiving my initial packet from my security office, I obtained a copy of my credit report. After researching all of the entries I found that a number of the entries were past financial agencies which at one time held one of my student loans. The majority of the entries no longer represent an open or active account.

It was never my intent to deceive anyone as to my ability to live within my means. With the accounts changing hands periodically, and me moving frequently, the automated payments I had set were cancelled, and the new institutions no longer had my address.

I have been in contact with all of the current account holders and am in the process of setting up payment/payoffs for all of them in order to bring all accounts current. (SOR Response)

Applicant most recently reported that all of his student loans had been settled. (FORM Response) He provided a letter from the lender noted at SOR allegation 1.c (\$3,932) indicating that his balance on that debt was satisfied. Applicant's intent regarding a proffered credit report excerpt is less obvious without narrative assistance, given the abbreviated account numbers. (see FORM, Item 8)

That credit report appears to reflect that the student loan noted at SOR allegation 1.n (\$2,823) was paid in March 2017. This conclusion is based on the similar balance and the similarity in the abbreviated account number shown.

Regarding the accounts referenced at SOR allegations 1.k (\$4,641) and 1.m (\$3,590), those two loans are shown to have the same full or partial eight-digit account number. Two accounts in the credit report also contain those eight digits, but they are for

² This corresponds to several of the accounts, although a couple of the student loan accounts reflect a date of origin between 2006 and 2007.

past-due balances of \$2,943 and \$5,860.³ Otherwise, the remaining entries in the credit report, without additional narrative description, fail to link to any of the other accounts set forth in the SOR.⁴

This was the extent of Applicant's information regarding the SOR allegations. No documentary evidence regarding his investigatory efforts is included. It is unclear why he believes all of the loans at issue have been addressed. There is no indication Applicant has received financial counseling.

In completing a September 2014 security clearance application (SCA), Applicant answered "no" to questions inquiring whether he had any bills or debts turned over to a collection agency, and whether he was currently over 120 days delinquent on any debt. This was not correct given the student loans at issue, which are all either past due or in collection. Applicant denies that his negative answers constitute intentional falsifications. It appears he answered in the negative because he had simply lost control of his student loan accounts due to his relocations, discontinuance of automatic payments when he would move, and the transferring of various debts to subsequent lenders.

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 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. 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, in making a decision.

The protection of the national security is the paramount consideration. Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security. In reaching this decision, I have only drawn conclusions that are reasonable, logical, and based on the evidence provided.

³ In the credit report, the first of the two accounts noted has a handwritten note indicating \$800 had been paid, but no documentary evidence of such payment is included. (FORM, Item 8, at 2)

⁴ It is noted, however, that two student loan accounts on the final page of the credit report show February 2016 payments for \$4,430 and \$2,225, respectively. Those payments brought their respective balances to zero. The only accounts in the SOR with partially similar account numbers are for balances of \$518 and \$260, respectively. Therefore, a nexus between the SOR allegations and the credit report is not established.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 to obtain a favorable security decision.

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such 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.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, Applicant admits responsibility for the numerous delinquent student loans reflected on his credit report and in the SOR, dating from approximately 2006-2007. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the inability to do so; and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance related security concerns posed here:

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;

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

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 counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 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.

The financial matters at issue are multiple in number and recent. Applicant attributes his loss of control over them due to his relocations, discontinuance of automatic payments whenever he moved, and the transferring of various debts to subsequent lenders.⁵ Applicant failed to describe how or if he monitors such accounts when faced with a move or while at sea, therefore his actions under such circumstances cannot be assessed. Therefore, neither AG ¶ 20(a) nor AG ¶ 20(b) apply.

There is no evidence Applicant has received financial counseling. Moreover, progress has only been made toward the student loan accounts noted in the SOR at allegations 1.c (\$3,932) and 1.n (\$2,823). Otherwise, Applicant indicates he believes his student loans are settled or under control. Based solely on the credit report he submitted, however, that conclusion cannot be substantiated. At best, that credit report indicates only two debts amounting to about \$7,000 have been resolved from the 14 delinquent accounts amounting to about \$65,000. How that was accomplished is unclear. At best, AG ¶ 20(d) partially applies.

Guideline E, Personal Conduct

AG ¶ 15 articulates the security concern relating to personal conduct. It states that 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.

Here, on his 2014 SCA, Applicant denied having had any debts turned over for collection, or accounts that were over 120 days past due, in the preceding seven years. If this denial was an intentional falsity, AG ¶ 16 would apply:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement,

⁵ Applicant did not cite to his period of unemployment between 2012 and 2013 as a contributing factor to his loss of control over his student loans.

or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Given Applicant's work and credible, albeit brief, narrative, it is highly likely Applicant simply was unaware that the student loans at issue were delinquent when he completed his 2014 SCA. Without some indication of intentional falsity, no disqualifying condition can be raised. That is the situation in this case.

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 adjudicative process factors listed in the AG. Under AG ¶ 2(a), the need to utilize a "whole-person" evaluation is set forth. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my comments under the guideline at issue in my whole-person analysis.

A 36-year-old diver, Applicant has worked for the same defense contractor since 2014. He is often away from home. He honorably served in the Army National Guard from 2001 to 2007. Applicant is single and has no children. He earned a bachelor's degree in 2011 and an advanced certificate in 2012. He has previously maintained a security clearance without adverse incident.

From approximately 2007 until 2012, Applicant pursued post-secondary education, culminating in both a bachelor's degree and a post-graduate certification. He did so with financial assistance provided by multiple student loans. His credit reports reflect, and Applicant takes responsibility for, about \$65,000 in such loans.

Applicant lost control of his student loans due to the nature of his work, which has required multiple relocations and periods of time away from home. Aside from distracting him from following the progress on his loans, his moves could readily disrupt automatic payment schedules with his lenders. Other student loans were overlooked when they were transferred by one lender to another.

Based on Applicant's information, it appears that inattentiveness led to what are now reflected as his delinquent student loans. He wrote of efforts he has taken to address his situation, and noted some of his findings. He clearly showed one account for \$3,932 was satisfied, and provided documentation indicating another account for about \$2,823 was most likely paid or settled. In terms of proportion and demonstrated effort, this showing is minimal.

Overall, Applicant has failed to either provide adequate documentation regarding his efforts or to describe how his scant documentation substantiates more effort than they reflect. Clear documentation is needed to illuminate and reflect the positive efforts and

progress Applicant says he has taken. Consequently, financial considerations security concerns remain unmitigated. Lacking evidence Applicant intentionally falsified material facts on his SCA concerning collection and past-due accounts, especially when the evidence seems to indicate he simply lacked up-to-date knowledge about his student loans, I find he mitigated personal conduct security concerns.

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
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 1.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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge