



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



In the matter of:

ISCR Case No. 17-00233

Applicant for Security Clearance

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

02/27/2018

Decision

DAM, Shari, Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns arising from unpaid student loans and a delinquent credit card debt. National security eligibility for access to classified information is denied.

History of Case

On February 2, 2016, Applicant submitted a security clearance application (SCA). On February 21, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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 within the DoD after September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.¹

¹ I considered the previous AG, effective September 1, 2006, as well as the new AG, effective June 8, 2017. My decision would be the same if the case was considered under the previous AG.

Applicant answered the SOR in writing on April 5, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on June 22, 2017. DOHA issued a Notice of Hearing on August 24, 2017, setting the hearing for September 19, 2017. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence. Applicant testified, called one witness, and offered Exhibits (AE) 1 through 20 into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on September 27, 2017. The record remained open until October 24, 2017, to permit submission of additional evidence. Applicant subsequently requested an extension of that date and Department Counsel had no objection to his request. I extended the deadline to November 15, 2017. Applicant timely submitted AE 21 through 25, along with a letter that I marked as AE 26. Department Counsel had no objections to those documents, and they are admitted.

Findings of Fact

Applicant is 31 years old and unmarried. He earned an associate's degree in 2011. He has worked for his employer, a defense contractor, since 2013. He said his employer is pleased with his performance. (Tr. 24-25; GE 1)

After submitting his February 2016 SCA, Applicant was interviewed by a government investigator in November 2016. The investigator confronted him about his student loans and two delinquent credit card debts listed on his credit report, all of which were subsequently alleged in the SOR. He agreed he owed some of the student loan debt, but asserted not all of it. He would agree to a reasonable settlement, assuming he could afford it. (GE 2)

Applicant admitted during his interview that he previously misused credit cards. He also explained that in 2006 he obtained three privately funded student loans, totaling about \$70,000, to attend pilot training classes conducted by [Company A]. He completed 40 to 50 hours of the 200 hours required for certification, after which the school closed and went bankrupt. He was subsequently unable to complete the remaining hours for which his lender had paid. In 2014, he said the creditor contacted him, offering him a settlement of \$58,770, with three payments of \$19,000. He made a counter-offer for \$15,000 to be paid through monthly payments until paid. The creditor rejected the offer. Applicant understood that he owed some money for the hours he earned, but does not believe he owed the offered amount because he was unable to complete the course. (GE 2)

Based on credit bureau reports (CBR) from January 2017, February 2016, and September 2017, the SOR alleged five delinquent debts: three are the above-mentioned delinquent student loans that now total \$57,676; one is an \$8,186 judgment for a delinquent credit card account; and one is a collection account for an unpaid credit card debt of \$548. The allegations accumulated between 2008 and 2015. (GE 2, GE 3, GE 4; GE 6) The status of each allegation is as follows:

SOR ¶ 1.a: The \$8,186 judgment for an unpaid credit card was entered in July 2013 and subsequently his wages were garnished. Applicant used the credit card for living expenses during and after learning the pilot training program was closed. He said that his wages were garnished once after the judgment was entered, but those monies were returned to him because the creditor engaged in illegal practices in initiating the lawsuit. Applicant did not submit any document stating that the case has been resolved or dismissed. In October 2017, Applicant proposed making monthly payments of \$250 on the debt, but the creditor wanted a payment of \$3,400 before initiating those payments. Applicant does not have \$3,400. The debt is unresolved and has increased to \$11,339. (Tr. 28-31, 40; GE 5; AE 22)

SOR ¶¶ 1.b, 1.c, and 1.d: These three student loans are unpaid and unresolved. In May 2008, after the school closed, Applicant was notified that his loans would become due in December 2008. He then hired a lawyer to represent him in a class action suit. To-date, he has never made any payments toward the debt. He spoke to the creditor in January 2017, who asserted that he still owed the debt. The creditor submitted a proposed settlement of \$14,563 that could be paid in three installments. Applicant has since spoken to a lawyer, who told him that the statute of limitations passed and the creditor is not suing students for their unpaid debts. In his October 2017 letter, the lawyer indicated that class action suits were filed and settled against the lenders, however, Applicant was not part of that suit. Applicant intends to continue disputing the entire debt, but is willing to pay something on it. He believes the creditor bears some responsibility for the debt because it irresponsibly released funds. This matter remains unresolved. (Tr. 31-35, 42-44; AE 7, AE 23, AE 26)

SOR ¶ 1.e: Applicant paid this \$548 credit card debt in 2011. (Tr. 36-37; AE 10) It is resolved.

Applicant submitted a budget that he established in September 2017 with the assistance of a non-profit credit counseling organization. Applicant's net monthly income is \$4,095 and his expenses are \$3,700. His current credit report indicates that he pays bills on time. (Tr. 37; AE 16, AE 22) He has not taken credit or budget counseling, but has inquired about enrolling in a course. (Tr. 28)

Applicant's employer testified. He has also been Applicant's supervisor for four years. He said Applicant is a reliable and honest employee. He has never had a performance problem with Applicant. He recommends him for a security clearance. (Tr. 46-49)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 describing 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 applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Three may be disqualifying in this case:

- (a) Inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial difficulties that began in 2008 and continues to date. He has been unwilling or unable to satisfy or resolve those debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following may potentially apply:

- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant did not present evidence to establish mitigation under AG ¶ 20(b) as to his delinquent credit card debts, as he admitted that he misused them, which was a circumstance within his control. He established some mitigation under this condition as to his student loans, because the circumstance underlying the debts, the school's closing, was not within his control. There is no evidence that Applicant attempted to responsibly manage his credit card debts as they were accumulating; however, he did submit evidence that he hired a lawyer to represent him after the school closed in 2008, in an attempt to resolve the student loans. AG ¶ 20(b) partially applies to those allegations.

Applicant did not provide evidence that he participated in credit or financial counseling and that his large delinquencies are under control, as required under AG ¶ 20(c). He paid the smallest debt alleged in SOR ¶ 1.e, establishing mitigation under AG ¶ 20(d) as to that debt. He admitted that he owed all of the other four alleged debts, but contended that he does not owe the full amount of the student loan debts. He provided some evidence that he has a reasonable basis for his position regarding the loans and has taken some steps to resolve the issue. AG ¶ 20(e) partially applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(d):

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case, including those mentioned in the analysis of the financial considerations guideline. Applicant has successfully worked for his employer for the past four years. He was candid and forthright during his testimony. He accepts responsibility for the two credit card debts, and paid one of them. He acknowledged that he owed a portion of his large student loan debt. He appears to be appropriately managing his other finances. Those are positive factors in this case. However, the large credit card debt and all student loans remain unresolved. He did not present any evidence that he has made a single payment on them or has a plan to resolve

them. At this time, he has not established a solid record of responsibly resolving his delinquent debts. Overall, he has not met his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM
Administrative Judge