



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03208

Appearances

For Government: Chris Morin Esq., Department Counsel
For Applicant: *Pro se*

10/01/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On October 3, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 (AG) effective on June 8, 2017.

Applicant answered the SOR on November 29, 2017, and requested a hearing before an administrative judge. The case was assigned to me on May 2, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 16, 2018. I convened the hearing as scheduled on July 26, 2018. The Government offered

exhibits (GE) 1 through 4.¹ Applicant testified and offered Applicant Exhibit (AE) A. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on August 6, 2018.

Procedural Issues

Department Counsel amended the SOR to reflect correct debt balances alleged. The corrections are as follows: SOR ¶¶ 1.a-\$21,980; 1.b-\$15,420; 1.d-\$13,745; and 1.e-\$3,705. There was no objection.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 32 years old. He is not married. He has a two-year-old daughter for whom he pays child support. He has been cohabitating with his girlfriend since March 2018. She owns a house, and they split all of the expenses. He attended college from 2005 to 2009, earning a bachelor's degree. He has been employed by the same government contractor since he graduated from college. He estimated his current salary is about \$85,000.²

Applicant testified that he funded his college education through student loans. He obtained both federal and private student loans. After he graduated from college, he moved to a new state, and six months later began paying his student loans. He testified that he made consistent payments from 2005 to 2015.³

Applicant completed his electronic Questionnaire for Investigation Processing (e-QIP) in May 2016. In December 2016, he was interviewed by a government investigator. During his interview, he told the investigator that his student loans were past due. He explained he obtained an attorney about 18 months prior to find a way to reduce his loan payments. He was instructed by the attorney to stop making payments, and he followed this advice and stopped paying his student loans in January 2016. He was told by the attorney that because these were private loans, each one was required to have his signature. Applicant told the investigator that he did not sign each loan, but rather the loans were carried over. Applicant told the investigator that he was attempting to get the loans reduced or removed. At the time of the interview, Applicant told the investigator that he owed approximately \$93,000. He had been paying \$980 a month for six years, which was mostly interest, and he was not making progress on reducing the balance of the loans. Applicant told the investigator that he did not disclose that the loans were past-due

¹ Hearing Exhibit I is the exhibit list and II is the Department's discovery letter.

² Tr. 14-17, 51.

³ Tr. 17-20.

on his e-QIP because he did not think about it. He further told the investigator that he intended to pay the loans, but wanted a fair amount without high interest rates.⁴

At his hearing, Applicant testified that the \$980 monthly payments he had been making were only covering the interest on his student loans, and he was attempting to reduce the principal. He attempted to negotiate with the student loan creditor, but because he was earning a significant salary, it would not help him. So Applicant was looking for different ways to reduce his balance by negotiating with a different lender or consolidating the loans.⁵

Applicant stated that in October or November 2015, he was contacting different banks to try and reduce or consolidate his student loans. He called a student help line and was given the phone number of an attorney. He testified that the attorney told him that the creditors of his loans may have used improper practices with their loan applications, and the attorneys were looking into it. When questioned further at his hearing about the specifics of the practices, Applicant said the impropriety was “by giving loans without having the students sign for the loans.”⁶ Applicant stated that he signed the first loan application, but not the others.⁷

Applicant testified that he accepted subsequent loans, took the money, and used it to pay for his college. The attorney then advised him that there was a lawsuit against the loan company that Applicant received his loans from regarding its improper practices. Applicant testified that the attorney told him to stop making his monthly loan payments, which he did. Applicant agreed to pay the attorney \$950 a month because the attorney was going to get his loans reduced or removed. Applicant testified that the attorney told him that in the end “they can either get the loans completely wiped off from my name, or that they can get it reduced to half of the amount and that if they couldn’t get it wiped out, that whatever money that I was paying them, it would be paid towards the loan. So, basically get it brought down.”⁸

Applicant provided a copy of a limited power of attorney that he signed on March 5, 2016. It stated:

I hereby duty authorize, empower and appoint the [attorney, P.A.] including any of its attorneys, debt settlement negotiation staff and other parties it may designate as my Attorney-in-Fact, to communicate with any of my

⁴ GE 2. I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider it when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

⁵ Tr. 29-30.

⁶ Tr. 20-37.

⁷ AE A.

⁸ Tr. 20-37.

Creditors, Creditors' Representatives and/or Collection Agencies and obtain any requested information regarding any accounts or debts I may owe, including but not limited to a complete account of my account, payment history, credit rating, verification of the account and any other information necessary to make satisfactory arrangements for the settlement and/or litigation of such accounts or debts. Also to make good faith settlement offers on my behalf to settle such accounts or debts.⁹

Applicant provided copies of letters by the attorney to one of the major credit reporting bureaus, all dated May 10, 2016, initiating a dispute for six student loans, claiming the each debt was inaccurate, not valid, and unenforceable, and requesting it be removed from Applicant's credit report. Applicant provide a letter from his student loan creditor, dated May 31, 2016, replying to an inquiry made by Applicant's attorney to it. The creditor indicated that because Applicant was represented by the attorney, all future contact would be made through the attorney. The letter also stated:

Please be aware that you remain responsible for any payment due, even though we're unable to communicate with you. Any delinquency on the account would continue to accrue unless you make the necessary payments to bring and maintain the account balance in a current status, even if we're prevented from communicating with you. In addition, the account will continue to be reported to the national consumer reporting agencies.¹⁰

Applicant provided a letter from his attorney from November 2016, conveying to Applicant that the attorney had received a settlement offer from the student loan creditor. The letter stated: "The offer is for a lump sum settlement in the amount of \$33,709 and a balance of \$85,140.70. This settlement offer expires on November 20, 2016."¹¹ The letter also advised Applicant of his options: "You may decide to present them with a counteroffer, you can accept the offer, or you may decide to decline the offer."¹²

Applicant did not accept the settlement offer. He stated he did not accept the settlement offer because it was not part of the original agreement he had with the attorney. He said he would still have to pay the attorney \$950 until the loans were settled. He also could not afford to pay the settlement agreement. He testified he stopped paying the attorney in January 2017. When Applicant was asked why he stopped paying the attorney he said: "Well, through the process, I saw what you're saying now. It sounds too good to be true, and I saw the effects that it did to not only my credit, but to everything that was

⁹ AE A.

¹⁰ AE A.

¹¹ AE A.

¹² Tr. 41-44; AE A.

attached to my credit.”¹³ He contacted the law firm to express his dissatisfaction. He told the law firm that he was going to contact the state’s attorney general’s office to complain, and they laughed at him. When asked if he ever filed a complaint, he stated he did not.¹⁴

After Applicant stopped paying the attorney, he did not resume making monthly payments on his student loans. Applicant testified that he called a friend who is an accountant. The friend told him that because the student loans are “charged off” they are “no longer on their books”¹⁵ and the debts are sold to a third party that tries to collect the debt. Applicant testified he has not contacted the student loan creditors or done anything to resolve the delinquent student loans, even after receiving the SOR in October 2017. According to the credit reports, the student loans were not sold to a third party. Applicant acknowledged he did not tell his accountant friend that he was applying for a security clearance. He stated the credit reports show his student loan accounts have a zero balance. They are all charged off. He acknowledged he has not paid the loans. He acknowledged he was never a party to a lawsuit against the creditors.¹⁶

Applicant’s statements, admissions, and credit reports from August 2017 and August 2018 substantiate the delinquent debts alleged in the SOR.¹⁷

Applicant testified that he has no other delinquent debts. He has been paying a federal student loan that is current with a balance of \$10,500. He files and pays his taxes. He has had no financial counseling. He has a surplus of money at the end of the month after paying his expenses. He has about \$10,000 in his checking and saving accounts. He has about \$75,000 in a pension account. He owned a house, but sold it in February 2017. He made about an \$8,000 profit. He used that money to pay other debts he owed. He purchased a new car in February 2018, because his old one was in an accident. He saves about \$200 to \$500 a month, which fluctuates depending on incidental expenses that may arise. Applicant explained that when he was paying his student loans in the past, he was doing it with a credit card. He would then pay his credit card, but not the full amount. Applicant testified that he made a mistake and got scammed. Applicant did not testify that he intended to pay these delinquent student loans in the future.¹⁸

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline,

¹³ 38.

¹⁴ Tr. 37-38, 48.

¹⁵ Tr. 39

¹⁶ Tr. 38-47, 53-56; GE 4, 5.

¹⁷ Ge 2, 3, 4; Answer to the SOR.

¹⁸ Tr. 47.

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. 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 an applicant may deliberately or inadvertently fail to 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 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 concern relating to the guideline for financial considerations is set out 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has about \$71,557 of unpaid student loans that have been charged off and he has not taken any action to repay them since about 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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;
- (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 admitted he received student loans to fund his college education. His monthly payments on the loans were only covering the interest on the loans and were not reducing the balance. Applicant attempted to find a solution to reduce his payments, but was unsuccessful. He accepted an attorney's advice to stop paying the loans based on a belief that perhaps there was a lawsuit against the loan company for fraudulent practices, and if it was successful he might not have to pay the loans. Applicant paid the attorney \$950 a month for about 18 months. The attorney was able to get a settlement offer from the creditor, but Applicant did not accept it because that was not the agreement he believed he had with the attorney, and he did not have the money. Applicant now believes because the loans are charged off he does not have to pay them. He did not provide any indication that he intended to repay them in the future. Applicant's conduct is recent. His failure to resume paying his student loans after he terminated his contact with his attorney casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant may have been duped by the attorney, but once he realized it he did not take action to resolve his delinquent student loans. A review of the limited power of attorney that Applicant signed, shows the attorney had authority to negotiate settlements for Applicant's debts. This may not have been what the attorney verbally told Applicant, but the document speaks for itself. When Applicant realized he was not going to get the results he had hoped for through the attorney, he stopped paying the attorney. He did not resume paying his student loans, but rather sought advice from a friend who is an accountant and was told the debts were charge off. Applicant offered no indication that he intended to pay these student loans now or in the future. The conditions that caused Applicant's financial problem were not beyond his control. Even if he was the victim of a scam, when he stopped paying the attorney, he should have resumed paying his student loans, which he did not. He threatened to file a complaint against the attorney, but did not. I find he did not act responsibly. AG ¶ 20(b) does not apply.

Applicant did not present evidence of a good-faith effort to repay his overdue creditors or otherwise resolve his debts. There is no evidence of financial counseling or that his student loan debt is under control. Applicant admitted he accepted loan money from the creditor and used it to fund his college education. He later determined the terms of the loan were too difficult for him to pay, and he stopped making good-faith efforts to do so. His inability to repay the loans does not constitute a legitimate dispute. AG ¶¶ 20(c), 20(d) and 20(e) do not apply.

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 the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a college educated 32 year old. He funded his education through student loans. He paid them for several years. Because of the significant amount of the loans, his payments were only covering the interest and not reducing the balance of the loans. Applicant was presented with a plan that he might not be required to pay his student loans because of alleged fraudulent practices by the creditor. He then stopped paying the loans. His attorney received a settlement offer, but Applicant did not accept it because he felt it was not what the attorney had agreed to do for him. Applicant stopped paying the attorney and never resumed paying his student loans. There is no indication from Applicant that he intends to pay the loans in the future. There is no question that Applicant received the money from the loans to pay for college. He now does not like the terms of the repayment agreement. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge