



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



In the matter of:)
)
) ISCR Case No. 17-03332
)
)
Applicant for Security Clearance)

Appearances

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

10/22/2018

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 20, 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 21, 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 25, 2018. The Government offered

exhibits (GE) 1 through 8.¹ Applicant testified and offered Applicant Exhibits (AE) A and D. There were no objections to any exhibits offered, and all were admitted into evidence. DOHA received the hearing transcript on August 2, 2018.

Findings of Fact

Applicant admitted the sole allegation 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 45 years old. He earned an associate's degree in 1994, a bachelor's degree in 1996, and enrolled in a master's program in approximately 1999. He completed about 18 months of study and needed one class to complete the degree, but has not done so. He obtained student loans to fund his master's classes. He married in 2008. He has a 17-year-old stepdaughter and a 9-year-old son.²

Applicant has worked for his present employer, a federal contractor, since January 2018. He was employed by another federal contractor from October 2013 to January 2018. From December 2012 to October 2013, he worked for a nongovernment employer. From October 2008 to December 2012, he was employed by a federal contractor. Before then he was unemployed for about six months. He worked in the education field from about 2000 to 2007. His wife decided to leave her job in January 2018 and go back to school seeking a new profession.³

In the past year, Applicant's grandmother gifted Applicant and each member of his immediate family \$14,000. His wife used her gift to pay tuition for school. The children's money is in savings for college. In the previous six years, Applicant received another \$13,000 gift each year from his grandmother. Applicant testified he used his money to pay living expenses.⁴

Applicant testified that when he obtained his student loans, he did not understand the mechanics of how to pay them. He received notices from the lenders when the loans were due, but could not afford to pay them due to insufficient income. He acknowledged the loans were in default, and the lenders repeatedly contacted him over the years to get them out of default. He said he received statements from the lenders, but the loans were beyond his ability to pay. He said he applied for "financial hardship" modifications that were denied.⁵

¹ Hearing Exhibit (HE) I is the exhibit list and II is the discovery letter. HE III are emails from Department Counsel noting he had no objections to AE C though F.

² Tr. 19-23.

³ Tr. 19-23.

⁴ Tr. 23-27, 69, 86.

⁵ Tr. 30-32.

Applicant testified that he “deprioritized” the student loans, meaning that he did not give them a high priority to be paid.⁶ He did not contact the lenders. He said, “Honestly, I took kind of a head in the sand approach.”⁷ He did not make an effort to negotiate a lower monthly payment with the lenders until his earnings increased. He said when he began earning more, he tried to get into a repayment program, but said he was unable to make affordable payments. Applicant testified that he believed over the years he made inconsistent payments to the lenders that would have satisfied the original principal of the loans. He said he believed he made about 50 payments of \$500 each.⁸

Applicant testified that in 2008 he was earning \$38,000 and his wife was earning approximately \$40,000 to \$50,000 as a personal trainer. After the economic downturn, she returned to her job as a physical therapist. She worked part-time. In 2009 or 2010 she worked full-time. Applicant stated that when she began full-time, her annual earnings started at about \$80,000 and when she stopped working in December 2017, she was earning \$88,000 annually. She was paying her student loans during this time. Applicant estimated that in 2012 his annual income was about \$72,000. In 2013, he earned about \$80,000 and had incremental raises over the years. In 2016, he earned \$117,000. His 2018 annual salary is \$130,000.⁹

When Applicant was questioned why he did not start paying his student loans when his income increased, he said because he was paying other debts. Also each year he owed a significant income tax debt that had to be paid. He said in 2012, he was unable to obtain a security clearance, so he began to pay his other debts, leaving his student loans for last. He said paying his other debts took time. He stated, “I was not necessarily living beyond my means. I was basically “robbing Peter to pay Paul,” so I accrued a lot of credit card debt, which I have subsequently paid off entirely.” He again acknowledged that his student loans were not a priority.¹⁰

In 2011, Applicant applied for a security clearance. He completed a security clearance application (SCA) in March 2011. He disclosed in it that he had financial issues, to include delinquent student loans. He stated, “Currently trying to bring student loans current. Debt is still pending.”¹¹ He also listed other delinquent debts that he was working to resolve.¹²

⁶ Tr. 31.

⁷ Tr. 32.

⁸ Tr. 30-45.

⁹ Tr. 30-45, 66.

¹⁰ Tr. 45-46, 67-68.

¹¹ GE 1.

¹² GE 1. Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purpose. It may be considered when making a credibility determination, in applying the mitigating conditions, and in the whole-person analysis.

In May 2011, Applicant was interviewed by a government investigator. He was confronted with his delinquent student loans. He told the investigator that his student loans had been in forbearance several times and that over the past years he had done his best to make payments, but often went months without paying the loans. He told the investigator that he had set up a rehabilitation plan with the creditors and that \$300 to \$400 was automatically withdrawn from his salary every two weeks, and he was current with the plan. He said he was making all of the payments and intended to satisfy his student loans when the plan was completed. Applicant had other delinquent debts that were discussed with the investigator at the time. He attributed his financial problems to a failed business and a decrease in income when he began teaching. He told the investigator that he was on the right path to satisfying all of his debts and financial obligations. He was doing everything to put himself back in good financial standing. At the time, he had not had financial counseling, and he did not intend on accumulating future debt.¹³

In April 2012, Applicant was sent government interrogatories, which he signed and dated, verifying receipt. He failed to respond to the interrogatories, and his security clearance was denied. Applicant testified that he could not recall receiving the interrogatories.¹⁴

In November 2016, Applicant submitted a new SCA. In it he disclosed he owed approximately \$73,000 for delinquent student loans. He stated he was in the process of consolidating the loans so he could make manageable monthly payments that “will allow me to finally make good on my responsibility.”¹⁵ He indicated he would make monthly payments until his obligation was completed. In the SCA, he also disclosed he had owed the Internal Revenue Service (IRS) approximately \$14,000 for 2013 and 2014 federal income taxes, and he was working on paying local property taxes that were owed for 2015. He said he prioritized the debt to the IRS and was addressing his delinquent property taxes.¹⁶

In March 2017, Applicant was interviewed by a government investigator. He told the investigator that when his student loans became due, he was unable to make the payments because he was not earning sufficient income. He said in the past, he attempted to negotiate payment plans, but the creditors refused to settle for a reduced amount. He said he attempted to get an agreement where he could pay one loan at a time, but the creditors refused. He said he made payments in various amounts throughout the years, but due to the interest, he was unable to reduce the loans. In March 2017, he said he began a consolidation process, but was unable to estimate at that time how much the payments would be. He told the investigator that his debt to the IRS and the property

¹³ GE 7.

¹⁴ Tr. 88-90; GE 8.

¹⁵ GE 1.

¹⁶ GE 1.

tax issues were resolved.¹⁷ Applicant testified that it was not until after he completed his 2016 SCA that he felt comfortable financially to begin paying his student loans consistently.¹⁸

Applicant said from about 2012 to 2018, about every third month he made a student loan payment. He said in October 2017, he applied to consolidate his student loans. He made his first payment in January 2018. He provided documents to show that as of July 2018, he owes a balance of \$71,927. His documents reflect payments of \$853 each month in February, April, May, June (two payments) and July 2018.¹⁹

Applicant testified he and his wife purchased his grandmother's house in 2011. He contributes to a retirement fund. In 2016, they purchased a used SUV for \$19,000 and made several payments. It is now paid off. In 2017, he purchased a used vehicle for \$19,000. He made a down payment of \$5,000 and makes \$400 monthly payments. In March 2017, for their daughter's 16th birthday, they purchased her a car for \$12,000. They paid cash for the vehicle. Applicant vacationed in Europe in 2005 and 2007, but said he expended minimal money because other relatives paid his expenses.²⁰

Applicant filed an extension for filing his 2017 federal income tax return. He had no idea what his tax liability might be. He stated that if his tax bill is more than \$5,000 he would have to make arrangements pay it. He and his wife have \$3,000 in their savings account and \$3,000 in their checking account. He testified that at the end of the month after their expenses are paid, they have minimal excess income. They are trying to reduce their expenses since his wife went back to school. He has not had financial counseling. He said they spend most of their money at restaurants, which they have reduced. He took a consulting job in December 2017 to earn additional money. He received a flat fee of \$10,000.²¹

Applicant provided three character letters. In them he is described as professional, diligent, punctual, reliable, dependable, impressive, ethical, and trustworthy. He is a well-rounded family man who has a strong work ethic and is a leader.²²

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,

¹⁷ GE 6.

¹⁸ Tr. 52.

¹⁹ Tr. 61-65; AE C.

²⁰ Tr. 55-60, 70-71.

²¹ Tr. 77-85.

²² AE B.

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:

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

Applicant has delinquent student loans totaling approximately \$72,000 that have been owed for more than 15 years. 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; and

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

Applicant obtained student loans in approximately 2000. They became due in 2002 or 2003. He recently began to pay the loans, but given his past history and delay in addressing his financial obligations, I am unable to conclude that financial problems are unlikely to recur. His failure to responsibly address his student loans for years, casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his failure to pay his student loans to underemployment. This may have been a circumstance beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. He did not. Applicant ignored notices from the lenders when his loans became due. He stated he “deprioritized” them. There is insufficient evidence that he arranged a payment plan to address the delinquent loans as his income increased. After he applied for a security clearance in 2011, he told the investigator that he had made arrangements to pay the student loans. He was to make payments of \$300 to \$400 every two weeks. There is insufficient evidence that plan was executed. Applicant’s income increased over the years. The past seven years his grandmother gave him substantial monetary gifts. In March 2017, he paid \$12,000 for a car for his stepdaughter. It appears that when Applicant has had more money, he chose not to prioritize payments on his student loans. It was not until after he applied a second time for a security clearance in 2016 that Applicant decided to establish a payment plan to address the student loans. AG ¶ 20(b) partially applies.

Applicant stated in 2011 that he began a payment plan for his student loans. There is insufficient evidence that occurred. He started a payment plan in January 2018 and has made consistent payments. At this time, there is insufficient evidence, based on Applicant’s past financial track record, to conclude that he will consistently make the payments. I cannot find under the circumstances that Applicant’s recent action constitutes a good-faith effort to repay his lenders, and there is insufficient evidence based on his past conduct to conclude he will adhere to the plan. Applicant has not had financial counseling and without an extended period of compliance with his repayment plan, I cannot find there are clear indications his financial problems are under control. AG ¶¶ 20(c) and 20(d) 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 45-year-old man. He obtained student loans in approximately 2000. He failed to pay them for years. He stated he made some payments over the years. He attributed his failure to pay the loans due to underemployment. After his income increased, and his wife was also earning a substantial income, he focused on paying other debts. He has been on notice since 2011, when he first applied for a security clearance that his delinquent student loans were an issue. It was not until after he applied for a security clearance a second time that he began to take action. He has an unreliable financial track record. Applicant's ongoing conduct raises questions about his judgment, reliability, and trustworthiness. 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**

Subparagraph 1.a: 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