



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



In the matter of:)
)
) ISCR Case No. 15-01153
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2018

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On December 7, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on December 21, 2016, and elected to have his case decided on the written record. On May 12, 2016, Department Counsel submitted

the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on May 13, 2016. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence. The Government's documents identified as Items 1 through 7 are admitted into evidence. Applicant provided documents that are marked as Items 8 and 9, which are admitted into evidence without objection.¹ The case was assigned to me on March 20, 2017.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, and SOR ¶ 2.a. He also provided amplifying comments in an attached statement to his Answer. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He graduated from high school in 1976 and obtained a certificate from Copper Connection in 2002. He is Married and has two grown sons, and one grown stepson. He has been employed as a transport specialist by a federal contractor since May 2006. He reports a previous top secret clearance granted in 2009, and no military service.

The SOR alleges two charged off student loan debts totaling about \$74,485; and one allegation that Applicant falsified section 26 of the e-QIP that he submitted by failing to disclose these two delinquent student loans. He had co-signed with his son Brian. Brian obtained these two student loans in May of 2005 to attend college. Credit reports from June 2014, November 2015, and May 2016 verify the debts that are alleged in the SOR.³

Regarding the student loans alleged in SOR ¶¶ 1.a (\$61,819), and 1.b (\$12,666), credit reports show the accounts were opened in May 2005, and became delinquent initially in September 2010. The same past due balances are reflected on all three credit reports. Applicant stated in his response to the FORM that he believed the student loans were the responsibility of his son. Brian (son), asserts in his May 30, 2016 letter that he did not alert Applicant when he fell behind on these student loan payments.⁴ Although Applicant contends that he was unaware of these charged off student loans, and that is why he did not notify the DoD about them, he relates that he became aware of them only when "confronted by the auditor in August 2014".⁵ Yet, in his accompanying letter to the SOR, attached to his original answer to the SOR, he states that he found out that these accounts (student loans) were more than 120 days

¹ comprised of a one page letter from his son and another one page letter from applicant himself.

³ Items 5, 6 and 7.

⁴ one page letter dated May 30, 2016, signed by Brian Thomas and attached to response to Form.

⁵ One page letter dated June 6, 2016, signed by Applicant and attached to his response to the Form.

past due while he was looking to buy a house. “I then in turn made some payments to help my son catch up”.⁶ Applicant also stated there that “I have more than \$125,000.00 combined in my savings and 401k accounts” and “not listing and not fully knowing what ‘charged off’ account meant was my fault. I will begin the process to do what I can about this debt”.⁷ No additional evidence was provided to corroborate that Applicant made the five or six catch up payments on behalf of his son, or regarding efforts to resolve these debts.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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. 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 access to classified information will be resolved in favor of 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. Under Directive ¶ E3.1.15, 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

⁶ Item 2.

⁷ Id.

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 Executive Order 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 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁸

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent student loan debts that he co-signed for, and began accumulating in 2010 and remain unresolved. He was aware that his son was struggling to make payments on these student loans, as evidenced by his letter accompanying his Answer to the SOR. Applicant claims that he actually made 5 of 6 payments to get these loans back on track when his son fell behind. No corroboration has been offered for these supposed payments. Yet, Applicant's claims amount to an admission that he

⁸ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

was aware of the problematical nature of these loans well before he filled out his e-QIP in May 2014. 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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 knowingly co-signed for his son's student loans. He became aware at some point that his son struggled to keep up with the payments on these loans. Any modest application of due diligence, even a phone call to his son, would have ascertained that they were still unpaid and unresolved when Applicant completed his e-QIP. He has provided no evidence of his current financial situation except to say that he has \$125,000 in his combined savings/ 401k account. Thus, he appears to have adequate financial means to pay down these delinquent student loans, as he is legally bound to do. Yet, he has provided no evidence of following through on his stated commitment to resolve the issues with these delinquencies. There is insufficient evidence to conclude that his financial problems are unlikely to recur. His failure to address his delinquent debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant repeatedly stated that he thought the student loans were his son's responsibility. His son's financial problems were conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted

responsibly under the circumstances. Applicant noted in his Answer to the SOR that he found out about these delinquent student loans when he was looking to buy a house. He even took measures to bring the loans current, albeit temporarily, by making 5 or 6 payments. Yet, he did not later verify the status of these loans, while completing his e-QIP. He did not mention these delinquent loans either by deliberate omission or willful ignorance of their status. There is insufficient evidence to conclude Applicant acted responsibly under the circumstances. AG ¶ 20(b) does not apply. There have been no recent payments on these student loans according to the credit bureau reports. Without additional evidence, there are no indications that Applicant's financial problems are under control. AG ¶¶ 20(c) does 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(a):

(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(a) were addressed under that guideline, but some warrant additional comment.

Applicant's finances remain a security concern. He has failed to meet his burden of persuasion. 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 E, personal conduct, and 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.b: Against Applicant

Subparagraph 2.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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge