



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



In the matter of:

ISCR Case No. 12-04865

Applicant for Security Clearance

Appearances

For Government: Charles Hale, Esq., Department Counsel

For Applicant: *Pro se*

10/16/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. The Government failed to present sufficient evidence to establish facts alleged under Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On August 22, 2016, 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, and Guideline E, personal conduct. 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 within the DOD on September 1, 2006. On June 8, 2017, new AG were implemented and are effective for decisions issued after that date.

Applicant answered the SOR on September 7, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on October 17, 2016. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 7. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. Items 1 through 7 are admitted into evidence. The case was assigned to me on October 1, 2017.

Findings of Fact

Applicant admitted the SOR allegations in SOR ¶¶ 1.a and 1.b. He denied the allegation in SOR ¶ 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He earned an associate's degree in 1992. He married in 1985 and has an adult child. He served in the U.S. military from 1981 until he retired in 2005. He had a three-month period of unemployment in 2014, but otherwise has been employed since he retired from the military. He has worked for his current employer, a federal contractor, since June 2015.¹

The SOR alleges that Applicant is responsible for two delinquent student loans (¶ 1.a-\$27,085 and ¶ 1.b-\$8,796). In June 2011, Applicant was interviewed by a government investigator as part of his background investigation. During the interview, he acknowledged to the investigator that he was the cosigner for his sister for the two student loans that are alleged in the SOR. The student loan in SOR ¶ 1.a was taken out in approximately 1996 or 1997. He and his sister agreed she would be responsible for the loans. He told the investigator that he had not been contacted by the creditor or told by his sister that the loan in SOR ¶ 1.a was delinquent or in collection. He indicated that if his sister was unable to pay the loans, he would make plans to pay them in full since he had cosigned for them.²

Regarding the student loan in SOR ¶ 1.b, Applicant had the same agreement with his sister that she was responsible for the repayment of this loan that was taken out in approximately 2006. He told the investigator that his sister made regular payments on the loan, was never late, and she had paid it off early. He told the investigator that he received confirmation in the mail from the creditor in 2009 that the loan was paid. He disputed that he owed the loan or that the account was still open. He intended to contact his sister and the creditor regarding the status of the account.³

¹ Item 3.

² Item 7.

³ Item 7.

In Applicant's August 2015 security clearance application (SCA), he did not disclose the two student loans, as was required. The Government alleged in the SOR the following:

Section 26-Financial Record Delinquency Involving Routine Accounts-Other than previously listed, have any of the following happened? **In the past seven (7) years**, you had bills or debts turned over to a collection agency [and] **In the past seven (7) years**, you had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed: (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor." You answered "no" to both questions, and thereby deliberately failed to disclose your delinquent debts as set forth under paragraphs 1.a and 1.b. above.⁴

In May 2016, as part of Applicant's reinvestigation, a government investigator interviewed him. During his interview, he was confronted by the investigator with the two delinquent student loans (SOR ¶¶ 1.a and 1.b). He told the investigator he was not aware that the accounts were in collection or unpaid. He reiterated that he had cosigned the loans for his sister. He could not provide to the investigator any other details about the accounts. He intended to look into them and resolve them if necessary.⁵

In Applicant's September 2016 answer to the SOR, he denied he deliberately falsified information on his SCA when he failed to disclose the two delinquent student loans. He stated:

I feel that I was being truthful when I completed my (e-QIP). I have never had are (sic) received any document stating that I had any account in collections. The two student loans that I cosigned for I thought was (sic) being paid on a monthly basis until the special investigator told me that they wasn't.⁶

Applicant's response to both SOR ¶ 1.a and ¶ 1.b was "I admit now."⁷ He explained in his response that the investigator told him that he had four delinquent student loans. Applicant stated that he only had three student loans that he had cosigned. He believed the student loans alleged in SOR ¶¶ 1.a and 1.b were being paid monthly. He stated he never received notice that the accounts were in collection. He stated that after his 2015 interview, he contacted his sister and told her the accounts were in collection. She told him the loans were being paid. He further stated in his answer to SOR ¶ 1.a: "I am presently trying to see if I myself as the cosignor can establish a payment plan and pay

⁴ Item 3.

⁵ Item 3, 4.

⁶ Item 2.

⁷ Item 2.

this loan off.”⁸ His response regarding SOR ¶ 1.b was: “If and when I am able to get through to the collection agency[,] I can actually pay this loan off now for the total amount \$8,796.”⁹

Applicant’s June 2011 and April 2016 credit reports show both student loan accounts are in collection status.¹⁰ Applicant did not provide any evidence of his actions to resolve the debts after he was confronted with them in 2011 or again in 2015. He did not provide a response to the FORM that requested he provide documentary evidence to support his proposed actions to resolve these debts.¹¹

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 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.”

⁸ Item 2.

⁹ Item 2.

¹⁰ Items 2, 5, 6.

¹¹ Item 2.

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 been aware since at least 2011 that two student loans for which he cosigned were in collection. He indicated he would contact his sister, and if she could not pay them then he would. In 2015, when he was interviewed again and confronted with the same delinquent student loans he said he intended to research and resolve them, but

failed to do so. In his September 2016 answer, he again indicated he would resolve the debts. They remain unresolved. 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 understood as the cosignor of two student loans that he was ultimately responsible to pay them. Despite being made aware of their collection status in 2011, and his promise to research and resolve them, he failed to do so. In 2015, he was again confronted with these debts. He again promised to resolve them, and has not. Applicant's financial issues are ongoing. Based on his past conduct, I cannot find that his behavior is unlikely to recur. His failure to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant was made aware of the delinquent student loans in 2011. He indicated he intended to contact his sister and resolve the debts. The evidence does not support that his financial problems were largely beyond his control. Despite being made aware of the debts in 2011, they remained unpaid. He failed to provide sufficient evidence to show he took any action on the debts from 2011 to 2016. He has not acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant did not provide evidence of financial counseling and that there are clear indications the problem is being resolved or is under control. Applicant did not provide evidence that he has initiated and he is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve the debts. AG ¶¶ 20(c) and 20(d) do not apply. Applicant admitted he is responsible for the alleged debts. AG ¶ 20(e) has not been raised.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In 2011, Applicant was made aware that the two student loans he cosigned were in collection status. He stated that he never received any documents regarding their status and believed they were being paid or had been paid. He told the investigator that he would contact his sister and the creditor regarding the debts. In 2015, he gave a similar explanation to the investigator when he was confronted with the same delinquent student loans, that is he did not know the accounts were in collection status and unpaid. Applicant knew when he completed the SCA that he had the student loans that were in default and more than 120 days delinquent. However, the Government did not allege the correct paragraph under section 26 of the SCA. There is no evidence that these debts were turned over to a collection agency or that they had been charged off, suspended, or cancelled for failing to pay them as agreed, as was alleged in the SOR. I find in Applicant's favor under the personal conduct allegation.

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 56-year-old military veteran. Except for a short period of unemployment in 2014, he has been steadily employed since he retired from the military in 2005. Applicant cosigned student loans for his sister. Despite being aware that they were in a collection status and his repeated promises to resolve them, he has not. He did not provide sufficient evidence in mitigation. The record evidence leaves me with 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. As discussed above, I find in Applicant's favor under Guideline E, personal conduct.

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge