



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



In the matter of:

ISCR Case No. 17-04203

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Barret Thomas Alexander, Personal Representative

July 10, 2018

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On January 3, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on January 18, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 10, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on April 17, 2018, and the hearing was convened as scheduled on May 8, 2018. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted

without objection. The Applicant offered nine exhibits at the hearing, referred to as Applicant's Exhibits A through I. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on May 16, 2018

Findings of Fact

Applicant is 29 years old. He is unmarried with no children. He has a Bachelor's Degree of Science in Environmental Engineering. He is employed by a defense contractor as an Environmental Health and Safety Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR identified eleven debts under this guideline, eight out of the eleven are delinquent student loans totaling approximately \$67,000, and other miscellaneous debt of \$10,000, for a total of approximately \$76,000. In his answer, Applicant admitted allegations 1.b., 1.c., 1.d., 1.h., and 1.i. He denied the remaining allegations. Applicant began working for his current employer in February 2017, and has been trying to remedy his financial indebtedness.

Credit Reports of the Applicant dated April 29, 2017; November 8, 2017; February 27, 2018; and May 7, 2018, confirm each of the debts listed in the SOR. (Government Exhibits 3, 4, 5, and 6.) From 2011 through 2015, Applicant attended a university to obtain a degree in engineering. Following his graduation in 2015, he experienced difficulty paying his student loans and other debts. He explained that at the time, he was taking care of his handicapped younger brother who suffers from Type-1 Bipolar Disorder, which involved dramatic mood swings and depression, and suicidal tendency. Applicant was his brother's primary care-giver and did not receive parental support of any sort. Applicant's mother left the family to pursue a new marriage while his father remained relatively absent from his life. Applicant was left with the financial responsibility of taking care of his younger brother, while also trying to finish college. Applicant explained that he was financially destitute when he graduated from college. During his last semester in college, he lived in six different houses with friends and did what is called "couch surfing," as he did not have enough money for his living situation or to take care of his brother. (Tr. p. 39.) Applicant stated that he worked part time and odd jobs to pay for essentials, such as food and rent, but it was not enough without dropping his class schedule all together, so he pursued financial aid from several education lenders, and accrued large debt.

Applicant testified that he currently has 12 outstanding student loans comprised of eight standard, unsubsidized and subsidized loans with the Department of Education.

(Applicant's Exhibits A, B and C.) These student loans are set forth in allegations 1.b., 1.c., 1.d., and 1.h., totaling approximately \$32,000. Applicant is also indebted for four ECMC student loans, which are loans granted through a Special Appeal Board under extraordinary circumstances. (Applicant's Exhibit D and E.) These student loans are set forth in allegations 1.a., 1.e., 1.f., and 1.g., totaling approximately \$33,000. Applicant testified that he has completed the rehabilitation program with regard to the ECMC student loans, and is in the process of re-establishing a payment plan. Applicant's 2017 tax return, in the amount of \$1,015, went toward a payment for this loan. He believes that he now owes at total of about \$32,000 for the four ECNC student loans. His eight student loans with the Department of Education are currently in the rehabilitation program, which is set to be completed in September of this year. He testified that he has made one payment of \$2,000 toward this debt of about \$33,000. Once the rehabilitation program is completed, Applicant intends to ask the Department of Education to consolidate what he owes on all of his student loans loans to make the payment plan more affordable. As of May 7, 2018, Applicant's outstanding principal in total student loans is \$67,553. His total outstanding interest is \$8,455. (Applicant's Exhibit A.) He hopes to obtain an income-based repayment plan. (Tr. p. 41.)

1.i. Applicant also owes a bank for a delinquent credit card debt in the amount of \$4,478. Applicant explained that he was using this credit card to pay living expenses. The account has been closed and will no longer accrue interest. The debt remains owing. (Tr. p. 57.)

1.j. A debt to a creditor for an account that was charged off in the amount of \$4,006 remains owing.

1.k. A debt owed to an apartment management company was placed for collection in the amount of approximately \$4,008. Applicant settled the debt the day before the hearing, and it is no longer outstanding. (Applicant's Exhibits H and I.)

Guideline E – Personal Conduct

The Government alleges that the Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness and ability to protect classified information.

Applicant completed an e-QIP dated March 6, 2017. Section 26 asked about his Financial Record, specifically, "Delinquency Involving Routine Accounts Other than Previously Listed." The question asked, "In the past 7 years, have you defaulted on any type of loan?" It also asked, "In the past seven years have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?" It further asked, "In the past seven years have you been over 120 days delinquent on any debt not previously entered?" Applicant responded, "NO," to all three questions. (Government Exhibit 1.) These were false answers. Applicant failed to list any of the delinquent debts set forth in allegations 1. a., through 1. k., of the SOR.

Applicant denied the allegation and claims that he misunderstood the questions. He states that he thought the questions were asking him if he has ever had a credit card forcibly close as a result of a delinquency. Applicant further states that he has closed his accounts himself to avoid accruing interest, and he thought that if he closed his accounts himself, they could not become delinquent. (Tr. pp. 45-57.)

Applicant was confronted by the investigator about his delinquent debts, including his student loans, during his security clearance background investigation, and was asked how he intended to repay them. Applicant told the investigator that he intended to use large sums of money from his Federal tax return and allocate the entire return to two different loan vendors. (Tr. p. 47) Applicant did not disclose these delinquent debts on his security clearance application. He states that he did not realize that they were delinquent and that's why he did not list them. He states that he did not have a liaison or assistance in filling out the application. I do not find this testimony credible. Given the fact that the Applicant testified that he has been struggling financially for so long, he knew or should have known about his delinquent debts and he should have listed them in response to the questions of the security clearance application under Section 26.

Applicant's year end performance review for 2017 is favorable. (Applicant's Exhibit H.)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 to be 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, administrative judges apply the guidelines 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 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. Under Directive ¶ E3.1.15, the 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.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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 adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

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

Applicant's remains excessively indebted and is still working to get some of his student loans through the initial rehabilitation program before he can actually consolidate his loans and set up a payment plan to begin to resolve the debt. He currently owes about \$65,000 in student loan debt. He also has several other debts that remain delinquent. Given the circumstances, he has only resolved one debt listed in the SOR. At this time, there is insufficient information in the record to conclude that he is now financially stable, that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. No monthly student loan payment has not been agreed upon, nor has he started to show that he can reasonably make the required payments. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

- (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.

There were obviously circumstances beyond the Applicant's control that contributed to his financial difficulties. As the primary care giver for his younger brother, Applicant was unable to stay current with his student loans and other debt. Applicant is commended for making this great sacrifice for his younger brother. However, Applicant

has not yet started his monthly payments to resolve his delinquent debts, and they, for the most part, remain excessive and outstanding. At this point, it cannot be said that he is financially stable or that he has made a good faith effort to resolve his indebtedness.

Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately falsified his e-QIP in response to questions regarding his delinquent debts. Applicant testified that he has struggled financially for years while trying to obtain his college degree, and after graduating, while caring for his younger brother. This clearly shows that he knew about his delinquent debts. Applicant is an educated and intelligent young man who was not honest with the Government. He knew that the debts became delinquent, and he deliberately failed to disclose them in response to questions on the e-QIP. The Government relies on one's responses to the questions on the e-QIP to determine one's trustworthiness. If the answers are not truthful, the Government is misled, and Applicant cannot be trusted. Under the circumstances, Applicant knew or should have known about his financial indebtedness. There are no applicable conditions that could be mitigating under AG ¶ 17.

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 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.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns.

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
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant:
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Paragraph 2, Guideline E:	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 interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge