



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



In the matter of: )  
)  
) ISCR Case No. 15-03875  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Gina L. Marine, Esq., Department Counsel  
For Applicant: *Pro se*

08/03/2016

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse defaulted on a joint student loan with a balance of \$50,692. Two other student loans, which were cosigned by Applicant for his spouse, were charged off for \$9,342 and \$7,346 in 2012. They have made monthly payments consistently since May 2012 on the largest loan, but repayment plans for the other loans were not established until February 2016, when a collection agency proposed a settlement. Applicant and his spouse are paying their monthly expenses on time, but available information is not sufficient for me to reasonably conclude that they can be counted on to address the student loans without falling behind on other debts. Clearance is denied.

**Statement of the Case**

On December 3, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find that it is clearly consistent with the national interest to grant him security clearance eligibility. The DOD CAF took the action 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 (AG) effective within the DOD on September 1, 2006.

Applicant responded to the SOR allegations on December 24, 2015, and he requested a decision on the written record without a hearing. On January 27, 2016, the Government submitted a File of Relevant Material (FORM) consisting of seven documents (Items 1-7), including Applicant's answer to the SOR (Item 2). On January 29, 2016, the Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. Applicant received the FORM on February 5, 2016. Applicant submitted an undated rebuttal to the SOR, which was received by DOHA on March 3, 2016.<sup>1</sup> On March 4, 2016, Department Counsel indicated that the Government did not object to the consideration of Applicant's response to the FORM. On April 22, 2016, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant a security clearance for Applicant. Applicant's rebuttal to the FORM is hereby incorporated in the record as Applicant Exhibit (AE) A.

### **Summary of SOR Allegations and Response**

The SOR alleges that Applicant owed three student loans, which had been charged off for \$7,346 (SOR ¶ 1.a), \$55,137 (SOR ¶ 1.b), and \$9,342 (SOR ¶ 1.c), and were delinquent as of December 3, 2015. When he answered the SOR (Item 2), Applicant indicated that the debts had been charged off in 2012 when his spouse was laid off for six months.

### **Findings of Fact**

After considering the FORM and Applicant's rebuttal (AE A), I make the following findings of fact.

Applicant is a 37-year-old college graduate, who has worked for a defense contractor since January 2003. He seeks his first DOD security clearance on application submitted in April 2013. (Item 3.)

Applicant and his spouse married in September 2005. (Item 4.) They have two children born in August 2008 and November 2010. Applicant's spouse also has a 20-year-old son that they raised. (Item 3.)

Applicant and his spouse purchased their current residence in July 2008 with a mortgage loan of \$218,641. (Item 7.) They paid off the loan by refinancing in January 2014 with a new lender. They obtained a \$202,750 mortgage and lowered their monthly mortgage payment from \$1,794 to \$1,626. (Item 5.)

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<sup>1</sup> It is unclear whether Applicant or someone else prepared his rebuttal. Applicant and his spouse are both referred to in the third person.

Applicant earned his bachelor's degree in August 2001. (Item 3.) He paid for his education in part with student loans. Between September 1997 and September 2000, Applicant obtained four student loans totaling \$14,250. His loans were current when they were consolidated in September 2003 for \$15,898. Applicant has paid his student-loan debt on time at \$119 per month. As of September 2015, the loan balance was \$4,609. (Items 7.)

Applicant cosigned or opened jointly with his spouse student loans for her, including some loans not listed in the SOR.<sup>2</sup> After completing her education in August 2008, she was employed full time as a nurse from October 2008 until November 2010, when she gave birth to their younger child. While on maternity leave for three months, Applicant's spouse received 60% of her regular pay. In May 2011, she took a job at less pay because of some personal family issues. (AE A.) By 2012, they were struggling to pay their household expenses, which took priority over her student loans. Available credit reports show that some of her student loans for which Applicant is liable jointly or as a cosigner were charged off in 2012, as follows.

Student loan #1 (SOR ¶ 1.a), opened in March 2007 for \$6,591 with Applicant as cosigner, was charged off for \$7,346 in October 2012. (Items 5-7.) A subsequent purchaser of the debt filed for a judgment of \$14,558 against Applicant and his spouse in late 2013, claiming default on the loan since May 2011. In January 2014, Applicant and his spouse countered that they had made some payments, including on July 23, 2012, to the original lender. They contested the validity of the lawsuit for lack of contract with the debt purchaser. On December 17, 2015, the debt purchaser filed for voluntary dismissal of the case without prejudice.<sup>3</sup> (Item 2.) The loan debt was sold to a collection agency. (AE A.)

Student loan #2 (SOR ¶ 1.b), a joint loan opened in September 2006 for \$47,140 (AE A), was charged off for \$50,692 in March 2012. (Items 5-7.) Payments were made toward the debt in 2011, but not on a consistent basis. Applicant and his spouse paid \$383 in March 2011 and April 2011; \$374 in June 2011; and \$384 in October 2011 and November 2011. After the debt was charged off, they made \$200 monthly payments from May 2012 to August 2012. From September 2012 through August 2013, they made \$50 monthly payments, which were not sufficient to cover the interest on the loan. Under terms arranged by the lender, they paid \$500 in September 2013 and again in October 2013. From November 2013 through at least February 2016, they have paid \$276 per month with no missed payments. Their payments have been applied toward interest only since June 2012. As of March 1, 2016, the loan had an outstanding balance of \$53,757. (AE A.)

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<sup>2</sup> A student loan, opened in February 2006 for \$3,960 with Applicant as cosigner, was charged off for \$3,684 in September 2011. In September 2013, he and his spouse settled the debt on a payment of \$2,248. (Item 5.)

<sup>3</sup> Applicant initially believed that the claim for a judgment on student loan #3 had also been dismissed. (Item 2.) The record contains the request from the purchaser to dismiss its claim without prejudice as to student loan #1. There is no such document for student loan #3 in the record. A dismissal without prejudice would not preclude the debt holder from re-filing for a judgment in the future. However, the student loans have since been sold. (AE A.)

Student loan #3 (SOR ¶ 1.c), opened in August 2006 for \$6,557 with Applicant as cosigner, was charged off in May 2012 for \$9,342. (Items 5-7.) The debt was sold in 2013, and the purchaser filed for a judgment of \$9,317 against Applicant and his spouse in late 2013, alleging default on the loan since May 2011. In January 2014, Applicant and his spouse contested the claim because of no contractual relationship with the purchaser, and the debt was no longer legally collectible because of the statute of limitations. (Item 2.) The debt was acquired by a collection agency in December 2015. (AE A.)

When he answered the SOR, Applicant attributed the charge-offs to his spouse being laid off for approximately six months after the birth of their second child. (Item 2.) In response to the FORM, he explained that his spouse returned to work after her maternity leave; that she had to take another job at less income in May 2011 because of personal family issues; and that he had some financial struggles “when his spouse was unemployed from June 2012-July 2012 while she was presented with some personal family issues,” and that she has been employed full time at a hospital since March 2013. (AE A.) It is unclear whether Applicant’s spouse earned any income from June 2012 until March 2013, when she returned to work full time. The record contains no detail about their income, expenses, or the personal family circumstances that affected their household.

Needing a security clearance for his duties, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) on April 5, 2013.<sup>4</sup> In response to inquiries concerning any delinquency involving routine accounts, Applicant indicated that three of his spouse’s student loans, on which he was legally liable, were over 120 days delinquent. He estimated the debt at only \$3,000 and explained that they were unable to make payments on some of her student loans while she was unemployed for six to nine months around January 2011. He added that he was “working on payment plans and plans to get student loans current.” (Item 3.)

As of April 2013, Applicant and his spouse were 30 days past due (one payment of \$714) on a vehicle loan obtained in November 2010 for \$43,354. They paid off the loan in August 2014, when they acquired a new vehicle. (Item 6.) Applicant’s credit record showed no additional delinquencies apart from his spouse’s student loans, for which he was legally liable as co-borrower or cosigner. (Item 7.)

On May 8, 2013, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About his spouse’s student loans, he indicated that he was making \$50 monthly payments toward student loan #2, which was current and which he inexplicably claimed had a balance of only \$7,500. He admitted that his spouse’s student loans #1 and #3 were past due, but he did not recall their balances. He expressed intent to contact the lender in SOR ¶ 1.a about a payment plan to resolve student loan #1. (Item 4.)

There is no evidence that Applicant took any action to address student loans #1 and #3 while the judgment actions were pending in court. Applicant indicates that neither he nor

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<sup>4</sup> The SF 86, included in the FORM as Item 3, is missing pages 1 through 4, which are largely instructional. Sections 1 through 29 are in the file.

his spouse was able to resolve the financial obligations at that time because of the discrepancies in the amounts owed and the “lender” declined to speak with them about repayment. (AE A.)

Applicant and his spouse took on new debt in 2014. Since May 2014, they have made monthly payments of \$127 to a furniture retailer toward a debt that had a balance of \$1,137 as of November 2015. In July 2014, they opened a car loan of \$28,260, to be repaid at \$567 per month for 73 months. In October 2014, they opened a car loan of \$18,555, to be repaid at \$351 per month for 73 months. (Item 5.)

On December 3, 2015, the DOD CAF issued an SOR to Applicant alleging delinquent student loan balances of \$7,346 on student loan #1 (SOR ¶ 1.a), \$55,137 on student loan #2 (SOR ¶ 1.b), and \$9,342 on student loan #3 (SOR ¶ 1.c). (Item 1.) Applicant responded to the SOR on December 23, 2015. He provided documentation of the judgment filings for student loans #1 and #3 in 2013, and of a notice of dismissal without prejudice in December 2015 of the case involving student loan #1. Applicant mistakenly assumed that the notice of dismissal also applied to student loan #3. (AE A.) Applicant stated with respect to both student loans, “We do not know what the status of the loan is or who holds it. [If] someone contacts us we are willing to setup a payment plan.” Concerning his claims of payment of student loan #2, Applicant provided documentation showing that his bank account would be debited for \$276 on November 30, 2015, toward the account’s \$53,757 balance. (Item 2.)

In December 2015, student loans #1 and #3 were acquired by a collection agency, who offered to settle both loans for a lump-sum payment that they could not afford. The collection agency then proposed a settlement of \$2,000 upfront and then monthly payments for two years. Instead, in February 2016, Applicant or his spouse arranged for \$75 payments on each loan by pre-authorized debit for three months, which is all that they can afford at this time. As of February 22, 2016, they owed \$16,431 (unpaid principal \$13,056) on student loan #1 and \$10,515 (\$8,355 in unpaid principal) on student loan #3. According to Applicant, he and his spouse will be contacted about the monthly payment amount every three months, and their payments will increase over time until the debts are resolved. (AE A.)

As of November 2015, Applicant and his spouse’s mortgage and car loans are being paid on time. Applicant has also been making monthly payments of \$118 on his consolidated student loan balance of \$4,609, \$51 on a student loan for his spouse of \$4,300, \$183 on his flexible spending credit-card account balance of \$8,789, and \$127 on the furniture debt. (Item 5.)

Applicant believes he has his financial problems under control. While he plans on following a “strategic budget” to improve his financial situation, he did not elaborate as to his household income or expenses. His spouse is applying for a government program that forgives student loan debt. (AE A.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 overall 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 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 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 about financial considerations is articulated 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.

The Guideline F concerns are established by Applicant's and his spouse's default of three student loans for her nursing studies. Student loans for which Applicant is liable as a joint borrower or as a cosigner for his spouse were charged off for \$7,346 in October 2012 (SOR ¶ 1.a), \$50,692 in March 2012 (SOR ¶ 1.b), and \$9,342 in May 2012 (SOR ¶ 1.c). Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are implicated.

The student loans at issue were obtained in 2006 and 2007, and there is no record of serious delinquency on other accounts. Even so, it is difficult to apply AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment." As of the date of the SOR, all of the loans were in delinquency status, including student loan #2 that they have been repaying on a monthly basis.

Applicant attributes the student loan defaults to "a lot of financial struggles in the years of 2011-2012, not only from the birth of their third child but as well as other personal burdens that they endured during that time." (AE A.) Applicant did not elaborate about their burdens, financial or otherwise, apart from indicating that his spouse received 60% of her regular pay during three months of maternity leave; that she had to take a new job at less income in May 2011 because of "personal family issues"; and that she was unemployed for a time, which he variously estimated at six months (Item 2) to six to nine months. (Item 3.) In rebuttal to the FORM, he indicated that he faced some financial struggles when his spouse was unemployed from June 2012 to July 2012. (AE A.) An unexpected layoff or voluntary unemployment to address unexpected family issues could implicate AG ¶ 20(b), but the mitigating factor requires that an individual act responsibly, as follows:

(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.

Applicant did not provide details about his spouse's income loss, their household financial obligations, or their personal burdens. Generalized statements of financial struggle from the birth of a child and other personal burdens are not enough to fully mitigate the student loan defaults under AG ¶ 20(b). From the limited information available, it is difficult to conclude that he did all he could to address the student loans under the circumstances that he faced.

Applicant is credited with the consistent payments made toward student loan #2 since May 2012, initially at \$200 a month. The payments were not sustainable in light of his spouse's apparent unemployment that summer. From September 2012 through August 2013, they paid \$50 a month, which did not cover the interest due on the loan, but it shows consistency in addressing the debt. They then made two payments of \$500 required by the creditor to accept \$276 per month in repayment. As of late February 2016, they have made 28 payments of \$276, which have been applied solely to interest due on the debt. With an outstanding balance of \$53,757 on the loan, it is going to be years before the debt is paid off. Even so, Applicant has established a sufficient record of repayment to apply AG ¶ 20(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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," to student loan #2.

Neither AG ¶ 20(c) nor AG ¶ 20(d) is adequately established as to student loans #1 and #3. Applicant and his spouse made no effort to repay the loans after his spouse acquired full-time employment in March 2013, which may well have been a factor in the purchaser filing for judgments and then refusing to discuss repayment with them while the lawsuits were pending. Applicant and his spouse cannot reasonably be faulted for not making payments toward the student loans before verification of contested balance amounts. However, the evidence also shows that they incurred a debt with a home furnishing retailer and opened two new auto loans in 2014 when they were facing possible judgment awards against them for \$23,876 in delinquent student-loan debt. With the auto loan obtained in August 2014, it appears that they reduced their monthly car payment from \$714 to \$567, but they then increased their monthly obligation to \$918 by taking on a \$351 car payment for another vehicle in October 2014. These obligations have compromised Applicant's and his spouse's ability to address student loans #1 and #3. Applicant and his spouse could not afford the initial settlement terms offered by the collection company that acquired the student-loan debts in December 2015. They showed some good faith in arranging to make three monthly payments of \$75 toward each loan starting in late February 2016, but there is no evidence that any of those payments have been made.

As of February 2016, the delinquent student loans in the SOR had an aggregate balance of \$80,703, which is a substantial debt burden. Student loans are an investment in one's future and do not carry the same judgment concerns as would excessive credit card debt. The consistent payments toward student loan #2 suggest that Applicant can be counted on to make payments toward student loans #1 and #3, provided he has the income to do so. Applicant is currently meeting their household expenses and obligations under a "strict, strategic budget." With little information about Applicant's household expenses in the record and no information about income or any savings, it is difficult to assess the financial impact of the \$150 in monthly payments promised to the collection agency holding student loans #1 and #3. The financial considerations concerns are not yet fully mitigated.



## 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 his 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.

The analysis under Guideline F is incorporated in my whole-person assessment, but some aspects warrant additional comment. Applicant indicated in rebuttal to the FORM that he and his spouse have already made "incredible strides in repairing their debt," and he is finally in a situation where he can make payments on all of his debts. He and his spouse apparently do not have the financial resources to commit to more than \$150 per month total toward student loans #1 and #3. Applicant is not required to establish that he has paid off each debt in the SOR, or even that the first debts paid be those in the SOR.<sup>5</sup> Even so, there must be adequate assurances that his financial difficulties are not likely to recur. Applicant addressed some of the concerns of the Government by presenting the evidence of his payments toward student loan #2. Available credit reports shed some light on his finances, but available information falls short of enabling a positive predictive judgment that his financial situation is no longer of security concern. Should Applicant establish a sustained track record of meeting all his obligations, including student loans #1 and #3, he

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<sup>5</sup> The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

may be able to show in the future that his financial problems are clearly under control. After considering all the evidence before me, I cannot conclude that it is clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

### **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:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge