



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



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 18-02253
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

05/20/2019

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on her private student loans, which have accrued to approximately \$190,000, and on a credit-card debt because of insufficient income. She has been repaying the student loans since February 2018 at \$100 a month and the credit card at \$50 per month since September 2017, but more progress is needed before I can conclude that her financial issues are sufficiently mitigated. Clearance is denied.

Statement of the Case

On October 4, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing a security concern under Guideline F, financial considerations. The SOR explained why the DOD CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for her. The DOD CAF took the action 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 *National Security Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR allegations on November 6, 2018, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Her case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On March 18, 2019, I scheduled a hearing for April 11, 2019.

At the hearing, four Government exhibits (GEs 1-4) were admitted in evidence. An April 2018 credit report (GE 4) was admitted over her expressed concerns about the misspelling of her first name and old address information because there was sufficient indicia that it was her credit report. Two Applicant exhibits (AEs A-B) were admitted in evidence, and Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on April 19, 2019. I received the transcript on April 30, 2019.

Findings of Fact

The SOR alleges under Guideline F that, as of October 4, 2018, Applicant defaulted on five student loans that had been charged off for \$41,561 (SOR ¶ 1.a), \$38,828 (SOR ¶ 1.b), \$35,254 (SOR ¶ 1.c), \$29,535 (SOR ¶ 1.d), and \$7,889 (SOR ¶ 1.e). Additionally, Applicant owed on a credit-card account placed for collection for \$4,141 (SOR ¶ 1.f). When Applicant responded to the SOR allegations, she admitted owing the student loans, but indicated that she was repaying them at \$100 a month since September 2017; that she intended to continue to make that payment for the next 11 months; and that she planned to increase her payment to \$500 a month after her car is paid off in October 2019. She explained she was unable to meet the \$1,200 monthly payment term on her student loans because she lacked full-time employment. As for the credit-card debt, she explained that her account was not currently delinquent, and she has established electronic repayments through November 2022.

After considering the pleadings, exhibits, and hearing transcript, I make the following findings of fact.

Applicant is a 35-year-old administrative assistant with a defense contractor. She has never married, but she is engaged. She and her fiancé have a five-year-old son. Applicant and her fiancé began a cohabitant relationship in approximately October 2010. (GEs 1-2; Tr. 48-49.) In late February 2019, Applicant and her fiancé moved into a home that he purchased from his brother. (Tr. 5, 49.) Applicant's fiancé has covered the rent and now mortgage throughout their cohabitant relationship. Applicant's living expenses are reduced because she has not had to pay rent or contribute to the mortgage. (Tr. 48-49.)

Applicant attended a private university in her home state from 2002 to 2006, when she earned her bachelor's degree in teaching physical education. (GE 2; Tr. 31-32, 36.) She paid for her education largely with student loans. Available account records (AE A)

and credit reports (GEs 3-4) show that she obtained a combination of federal and private student loans totaling approximately \$100,000.¹ (AE A.)

After college, Applicant worked as a leasing agent for a real estate company. She was employed full time until January 2007 and then part time one day per week until May 2007. In January 2007, Applicant began working full time on a contract basis as a medical records technician at a military health clinic while also attending a local community college. In January 2009, Applicant withdrew from the community college and moved back to her home state. She became employed in a contract position with a pharmaceutical company. (GEs 1-2.) Applicant or her father made consistent payments on her private student loans from October 2008 to February 2010. (GE 2; AE A.)

In approximately July 2010, Applicant returned to work at the military health clinic. (GEs 1-2.) Available student-loan payment records from the loan servicer reflect no payments on her student loans from April 2010 to December 2010, when \$20,302 was credited to her account. (AE A.) It is unclear what led to this credit entry. Total payments of \$1,857 were credited to her account in 2011. (AE A.)

In November 2012, Applicant became unemployed. She moved in with her mother and stepfather. Her mother was ill and needed her care and assistance. Applicant collected unemployment compensation from approximately November 2012 to September 2013. After her son was born in July 2013, Applicant was primarily a stay-at-home mother. She worked part-time on the weekends as a unit secretary at a hospital from September 2013 until April 2015. From January 2015 to June 2017, Applicant drove a school bus 30 hours a week at \$14 an hour while school was in session. Her take-home pay was approximately \$300 a week. During the summers of 2015, 2016, and 2017, she was laid off and collected unemployment compensation of \$150 to \$190 per week. (GE 2; Tr. 27-28.) Her federal student loans were deferred when she was unemployed, although interest continued to accrue on the loans. (Tr. 40.)

Applicant or her father made some of her student loan payments, including of \$743 per month from September 2012 through November 2013 and \$652 per month in 2014, although payments were sometimes late.² (GE 2; AE A.) Payments on her private student loans were minimal after April 2015, and interest continued to accrue on the loans, which had interest rates of 6.25% to 11.25% depending on the loan. Neither Applicant nor apparently her father could afford the \$1,200 to \$1,300 a month then required on the loans, and the loan servicer was not willing to accept lower payments. (GE 2; Tr. 35.) In January 2016 two of her private student loans were charged off for \$41,516 (SOR ¶ 1.a) and

¹ Applicant testified that she obtained about \$100,000 in student loans that have now accrued to approximately \$190,000 due to interest and fees. (Tr. 45.) The account history with the loan servicer for both her private and federal student loans lists disbursements of \$9,399 in November 2004; \$9,399 in January 2005; \$4,900 in March 2005; \$22,222 in October 2005; \$18,000 in October 2005; \$11,620 in February 2006; \$4,800 in February 2006; and \$13,121 in November 2006. (AE A.) The private loans were to be repaid at \$1,133 a month per the available credit information. (GE 4.)

² Applicant testified in part, "The bigger payments—like the \$652—those type of payments—those definitely came from my dad helping me financially." (Tr. 44.)

\$38,828 (SOR ¶ 1.b). In February 2016, three more private student loans were charged off in the amounts of \$35,254 (SOR ¶ 1.c), \$29,535 (SOR ¶ 1.d), and \$7,889 (SOR ¶ 1.e). (GE 3.) The loan servicer offered to settle her loans for a lump-sum payment of \$75,000 that she could not afford. (Tr. 30.)

Applicant became seriously delinquent on a credit-card account (SOR ¶ 1.f) in late 2015. Available credit reports show that she brought her account current in February 2016 before ceasing payment again in July 2016. In January 2017, Applicant's account was referred for collection. As of April 2017, her account was \$4,658 past due. (GE 3.)

With her son about to start full-day school, Applicant applied to work with a defense contractor. (Tr. 28.) On March 25, 2017, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). She reported no issues of potential security concern, including no delinquencies involving routine accounts in the last seven years. (GE 1.)

A check of Applicant's credit on May 16, 2017, revealed that she had defaulted on five private student loans and on the credit card account. Applicant was making timely payments on a credit-card account with a balance of \$5,904 and on an unsecured loan with a \$4,158 balance, although both accounts had been past due previously. She was making \$405 monthly payments on a car loan obtained for \$18,424 in June 2014 with a current balance of \$10,822. Her federal student loans were in deferment with a consolidated balance of \$15,169. (GE 3.)

In late August 2017, Applicant began working for the defense contractor at \$17.69 an hour. (Tr. 28.) As an administrative assistant with an interim clearance in a secured building, she worked on technical manuals containing both classified and unclassified information. (Tr. 37-38.) In September 2017, she began repaying her delinquent credit card (SOR ¶ 1.f) at \$50 a month under a repayment arrangement that ends in November 2022. (AE B; Tr. 29, 42.)

Applicant's charged-off private student loans were placed for collection with a collection entity willing to accept what she could afford in repayment, and she began repaying the loans at \$100 a month in February 2018. As of April 2009, Applicant had missed no payments, although her payments were late in May 2018 and August 2018. (AE A; Tr. 29, 40.) By then, the loans had been transferred back to the loan servicer, who accepted the repayment arrangement. Despite her consistent repayments since February 2018, Applicant had made little to no progress in reducing the balance of her private student loans because of the interest rate on the loans. (Tr. 45.)

On July 3, 2018, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). Applicant volunteered that she had financial delinquencies that should have been reported on her SF 86. She explained that she obtained student loans for her undergraduate education, and that she could not afford the monthly repayment required. Her father made the payments for her until approximately 2015, when he could no longer afford to do so. She advised the loan servicer that she

could not afford the payments. Sometime in early 2018, she arranged with a collection entity to make \$100 monthly payments. Applicant expressed an intention to re-evaluate her finances in October 2018 and see whether she could increase her monthly payment. She estimated her outstanding balance at \$160,000 for five private student loans and indicated that two other loans had been paid off previously. She expressed her belief that she had no other past-due debts. When confronted about the credit-card delinquency in SOR ¶ 1.f, Applicant stated that she had failed to recall the debt earlier, but it was being repaid at \$50 a month toward a current balance of \$4,100. Applicant attributed her financial problems to underemployment and unemployment. On July 3, 2018, Applicant was re-contacted by the OPM investigator. Applicant provided proof that she was making payments toward her delinquent credit card and her private student loans. (GE 2.)

As of July 2018, Applicant reportedly owed \$184,528 on her defaulted private student loans (\$51,380 on SOR ¶ 1.a; \$48,001 on SOR ¶ 1.b; \$43,097 on SOR ¶ 1.c; \$33,185 on SOR ¶ 1.d; and \$8,865 on SOR ¶ 1.e). The balance on her delinquent credit card in SOR ¶ 1.f was \$4,141. She had no other past-due debts on her credit record. She owed \$5,907 on her \$18,424 car loan; \$16,106 in federal student-loan debt; \$5,374 on a credit-card account closed by the credit grantor; and \$3,598 on an unsecured loan. Those accounts were rated as current. (GE 4.)

Applicant began repaying her federal student-loan debt at \$65 a month in November 2018, after she was contacted about her ability to commence repayment. (Tr. 40-41.) She has remained current on her federal loans since then. (AE A.) She recently received an offer to settle her federal student-loan debt of approximately \$16,000 for \$10,000 payable at \$250 a month for five months followed by \$85 a month until the \$10,000 is paid. After some consideration, she elected not to accept the offer because of the tax implications in that she would have to report cancelled debt as income on her tax returns. (Tr. 47.)

On October 4, 2018, Applicant was issued an SOR because of her large private student-loan delinquencies and her credit-card debt in collection. Her employer moved her to a non-secure building and gave her unclassified work handling correspondence. (Tr. 31, 37-38.) She does not need a security clearance for those duties but advancement prospects within the company are limited without a clearance. (Tr. 37.)

Applicant received a \$4,000 income tax refund for tax year 2018 in 2019. She saved \$1,000 of her refund for a summer vacation. She paid down her car loan to a balance of \$1,700 as of April 2019, and also purchased items for her new home. (Tr. 30, 42-43.) Based on her required monthly payment, Applicant's car loan will be paid off in October 2019. She hopes to satisfy her car loan by mid-July 2019, which would free up about \$400 a month. She plans to put the funds toward her credit-card and student-loan delinquencies "to try and get ahead of the interest" on her private student loans. (Tr. 29, 33-34, 46.) As of April 2019, her private student-loan debt had accrued to approximately \$190,000. (Tr. 45.) In hindsight, she regrets taking on such sizeable student-loan debt because of the financial burden. (Tr. 32.)

Applicant had credit counseling six or seven years ago. (Tr. 47.) Her fiancé's mortgage on their home is being repaid at \$993 a month. He had been paying \$1,200 a month in rent before he bought their home. (Tr. 49.) Applicant's fiancé was self-employed for about five years, during which time they "were scraping by." He returned to work a year ago. (Tr. 49.) The record contains no information about his employment or income.

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(a), 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. 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 about 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 concerns about financial considerations are articulated 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. . . .

An applicant is not required to be debt free, but is required to manage her finances in a way as to exhibit sound judgment and responsibility. The concern under Guideline F 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.

Applicant defaulted on her private student loans that she obtained for her undergraduate education at a private university. Five private student loans totaling \$153,067 were charged off in early 2016. By July 2018, the aggregate delinquency had accrued to \$184,528. Additionally, Applicant owed \$4,141 on a credit-card account in collection. Applicant's record of delinquent accounts triggers disqualifying conditions AG ¶¶ 19(a), "inability to satisfy debts," and (c), "a history of not meeting financial obligations."

The burden is on Applicant to mitigate the negative implications for her financial judgment raised by her delinquent debts. Application of the aforesaid disqualifying conditions triggers consideration of the potentially mitigating conditions under AG ¶ 20. Four of the seven mitigating conditions warrant some consideration and could potentially apply in whole or in part. They are:

(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 person has received or is receiving 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.

Regarding AG ¶ 20(a), the student loans in the SOR became seriously past due in 2015. A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). Available credit information shows that she rehabilitated her credit-card account in SOR ¶ 1.f in February 2016 only to default again in the summer of 2016. Despite efforts to address her credit-card and private student-loan delinquencies since she started working for a defense contractor in late August 2017, it is difficult to apply AG ¶ 20(a). Because of the interest rates on unpaid balances, her private student-loan debts now total approximately \$190,000. There is no evidence that her private student loans have been rehabilitated from default, but the loan servicer creditor is currently accepting payments.

Regarding AG ¶ 20(b), Applicant lacked the income to make the \$1,133 required each month to remain current on her private student loans. She became unemployed and moved home to care for her ill mother in November 2012, although at that time, her father helped her financially by making some student-loan payments for her. Her student-loan default in 2015 was not entirely outside of her control because it was her choice to be primarily a stay-at-home mother while her son was young. It is unclear whether she would have been successful landing a job that provided income sufficient to cover daycare as well as her monthly student-loan payments, but there is no evidence that she made a concerted effort to find full-time employment before 2017. Little information was presented about her expenses. She testified that she and her fiancé were scraping by.

Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside of her control, I have to consider whether Applicant acted in a reasonable manner when dealing with her financial difficulties. See ISCR Case No. 05-11366 at 4, n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether Applicant maintained contact with her creditors and attempted to negotiate partial payments to keep debts current. Applicant asserts that she informed the loan servicer for her private student loans that she could not meet the repayment terms, but the company would not accept partial payments. There is no evidence that she kept in contact with the bank identified in SOR ¶ 1.f to possibly avoid that credit-card debt going to collections.

Applicant began repaying the credit-card delinquency at \$50 a month in September 2017 and the private student loans at \$100 a month in February 2018 while were in collections. Her consistent monthly payments since then show some good faith under AG ¶ 20(d). Yet, it is difficult to conclude that her financial situation is sufficiently under control under AG ¶ 20(c), given the minimal progress shown toward reducing the debt balances. She testified that her \$100 monthly payments do not even cover the interest on her private student-loan debts that have accrued to approximately \$190,000.³ She used some of her \$4,000 income tax refund for tax year 2018 to reduce the balance remaining on her car loan, and she intends to increase her monthly repayment of her private student loans by \$400 a month when her car loan is paid off in a few months. Nonetheless, her student loan debts are a financial burden that is unlikely to be resolved anytime soon.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Like many students of her generation, Applicant took on large student loans for her college education expecting to land a job at some future date that would provide the income needed to repay them. After her son was born in July 2013, she worked part time until she began her current employment in August 2017. Her decision to be primarily a stay-at-home mother was understandable in some aspects, but it also had negative consequences in that the balance of her private student loans is now almost double that borrowed for her education.

Applicant began addressing her SOR debts after she applied for a security clearance but well before the SOR was issued. She is not required, as a matter of law, to establish that she has paid off every debt in the SOR. She is required to demonstrate that she has established a plan to resolve her financial problems and taken significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant's creditors have accepted her \$50 and \$100 monthly payments. She has a track record of more than a year of payments, but she also incurred late fees in May 2018 and August 2018 on her student-loan account. She did not offer an explanation for the late payments to rebut inferences of financial irresponsibility or alternatively a tenuous financial situation. Applicant and her fiancé have reduced their monthly expenses somewhat in that his mortgage payment is less than his previous rent. She should be in a position to increase her monthly student-loan payments substantially once her car loan is paid off in a few months, but it remains to be seen. She provided little information about her monthly expenses apart from her car loan.

³ The \$100 payments have been applied to interest on her account. (AE A.)

In exceptional cases, an administrative judge may grant initial or continued eligibility for a security clearance, despite the presence of an issue(s) that can be partially but not completely mitigated.⁴ Applicant testified credibly to a willingness to repay her debts. Yet, at even \$500 a month, it will take her more than 30 years to pay off her student loans. While this alone does not disqualify her from an exception under Appendix C, I have to consider that the larger student loan payments of the past were made by her father for her and not by Applicant herself. Her late \$100 payments for May and August 2018 cast some doubt about her current finances, and she has other obligations that may take priority, including the credit card and unsecured loan debts on which she owed \$8,972 in July 2018. A longer track record of consistent, timely payments is needed before I can confidently conclude that her financial situation no longer presents a security risk.

This decision should not be construed as a determination that Applicant cannot or will not attain the financial reform and rehabilitation necessary to be eligible for a security clearance in the future. After applying the disqualifying and mitigating conditions to the evidence presented, I conclude that it is not clearly consistent with the national interest to grant or continue security clearance eligibility for Applicant 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
Subparagraphs 1.a-1.f:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance.

Elizabeth M. Matchinski
Administrative Judge

⁴ Appendix C of Security Executive Agent Directive (SEAD) 4 grants DOHA administrative judges the discretionary authority to grant initial or continued eligibility for a security clearance *despite the presence of an issue(s) that can be partially but not completely mitigated* with the provision of additional security measures. See also Memorandum, Director for Defense Intelligence (Intelligence and Security), dated January 12, 2018 ("Appendix C identifies authorized exceptions that are to be utilized when making adjudicative decisions to grant initial or continued eligibility for access to classified information or to hold a sensitive position . . . Effective immediately, authority to grant clearance eligibility with one of the exceptions enumerated in Appendix C is granted to any adjudicative, hearing, or appeal official or entity now authorized to grant clearance eligibility when they have jurisdiction to render the eligibility determination.")