



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-01195  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2019

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 6, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on May 22, 2019, and requested a hearing before an administrative judge. The case was assigned to me on August 2, 2019.

The hearing was convened as scheduled on October 31, 2019. Government Exhibits (GE) 1 through 6 were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE F and G and admitted without objection

## Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He has worked for his current employer since 2001. He served on active duty in the U.S. military from 1996 until he was honorably discharged in 2001. He seeks to retain a security clearance, which he has held for an extended period. He has a bachelor's degree, which was awarded in 2008, and a master's degree, which was awarded in 2011. He is married with two children and a stepchild. (Transcript (Tr.) at 25-29; GE 1, 3)

The SOR alleges five defaulted student loans with balances totaling \$116,887, as listed on an April 2019 credit report. The three student loans alleged in SOR ¶¶ 1.c through 1.e total \$57,022. The three loans are serviced by the same company and collected through one payment. Applicant documented that he has been regularly paying the loans since May 2014, albeit possibly not at the rate required by his loan agreements. When adjusted for reversals, he made four \$275 payments, three \$250 payments, and one \$125 payment in 2014 (\$1,975 total in 2014); ten \$250 payments and one \$500 payment in 2015 (\$3,000 total in 2015); ten \$250 payments in 2016 (\$2,500 total in 2016); eleven \$250 payments in 2017 (\$2,750 total in 2017); twelve \$250 payments in 2018 (\$3,000 total in 2018); and as of April 2019, four \$250 payments in 2019 (\$1,000 total as of April 2019). The total of his payments from 2014 through April 2019 total \$14,225, and as of May 2019, the balance was reduced to \$56,773. He documented additional \$250 payments, making the total amount paid more than \$15,000 and reducing the balance to \$55,523 as of October 2019. (Tr. at 18; GE 2, 4; AE A, B, D)

SOR ¶¶ 1.a (\$34,637) and 1.b (\$25,228) allege defaulted student loans totaling \$59,865 to the Department of Education. Applicant's wages were garnished about \$361 every two weeks starting in June 2017. \$4,700 was garnished in 2017. An additional \$1,467 was garnished through February 2018. The amount of additional payments is unclear, but the Department of Education reported that he paid \$1,842 in interest in 2018. (Tr. at 20-23; GE 1-4, 6; AE C, D)

The garnishment stopped in February or March 2018, and the loans were transferred to a collection company. Applicant had some difficulty coordinating with the collection company and only made sporadic payments. He paid \$250 in September 2018 and \$200 in December 2018. An October 2019 credit reports lists both payments (September 2018 payment reported as \$144 payment to one loan and \$105 payment to second loan, and December 2018 payment reported as \$115 payment to one loan and \$84 payment to second loan). He credibly stated that he intends to pay his student loans. (Tr. at 19-24, 32-35, 40; GE 2-6; AE D, F, G)

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 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."

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.

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

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

Applicant defaulted on his student loans. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant did not completely ignore his student loans. He has been paying three loans since May 2014. His payments total more than \$15,000. The two Department of Education loans are less straightforward. More than \$6,100 was garnished in 2017 and 2018. The garnishment stopped in February or March 2018, and the loans were transferred to a collection company. Applicant had some difficulty coordinating with the collection company and only made sporadic payments. I believe it was a matter of "out of sight, out of mind." However, I also believe that he fully intends to pay his student loans, and that his efforts to pay all his loans will increase. The above mitigating conditions are applicable.

## **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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations 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:	For Applicant
Subparagraphs 1.a-1.e:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge