



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXXX	)	ISCR Case No. 19-01846
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Department Counsel  
Chris Morin, Esquire, Department Counsel  
For Applicant: Eric C. Eisen, Esquire

06/16/2020

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case [transcript (Tr.), Government exhibits (GE) 1-5, hearing exhibits (HE) I-II, and Applicant exhibits (AE) A-D], I deny Applicant’s clearance.

On 26 June 2019, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct.<sup>1</sup> Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 1 October 2019, and I convened a hearing 19 November 2019. DOHA received the transcript 3 December 2019, and the record closed.

---

<sup>1</sup>DoD acted 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 Security Executive Agent Directive 4, effective on 8 June 2017.

## Findings of Fact

Applicant admitted the SOR financial allegations, but denied falsifying his 2017 clearance application, asserting that he did not think that delinquent loans were “routine accounts.” He is a 61-year-old database administrator employed by a U.S. defense contractor since September 2015. He has been continuously employed in similar positions since 2007. He seeks to retain the clearance he has held since August 2007.

Applicant is a naturalized U.S. citizen who immigrated to the U.S. in 1985 to attend graduate school on a scholarship. In 1988, he married a woman from his native country, and became a naturalized U.S. citizen in 1991. He and his wife have four U.S.-born children together, born in 1989, 1993, 1997, and 1999.

The SOR alleges, Government exhibits (GE) 2-5 establish, and Applicant admits, two delinquent education loans totaling over \$238,000. The loan balances represent loan distributions made to Applicant between about 1989 and 1995 while he pursued his doctoral degree, which was awarded in 1995 (Tr. 32).

Applicant reports, without corroboration, that he initially made payment on his education loans when repayment began after the post-graduation grace period ended. As his family size grew, and the children grew, the pressure on his finances grew. He obtained some payment deferments, but the exact timing and extent of these deferments is not clear from this record. Applicant reports that the collection agent for the education loans began contacting him sometime in 2014, but he took no steps to begin repayment. With his own children entering college, Applicant decided to focus on handling their education expenses, so as to not burden them with their own education loans. He undertook to pay their college expenses through his current income so they could acquire their educations debt free.

When Applicant completed his October 2017 clearance application for his periodic reinvestigation (GE 1), he did not include his education loans because he did not think of his education loans as routine credit accounts like credit cards. However, when he was confronted with the loan debt during a June 2018 interview with a Government investigator (GE 2), he stated his intent to contact the creditor and make payment arrangements. Nevertheless, at the time of an October 2018 follow-up interview, he still had not contacted the creditor. Applicant reached out to the creditor in January 2019 (AE B) to begin the process of rehabilitating his education loans. He entered into a rehabilitation plan in February 2019, and made the required rehabilitation payments. At the time of the hearing, he was awaiting the details of a regular repayment plan, which may involve higher monthly payments than required for the rehabilitation program. As of 2 November 2019, the outstanding loan balance was over \$237,000 for the two loans. Applicant claims to have the necessary income to handle whatever the new loan payment might be, and in a pinch, has financial assets sufficient to pay the loans in full (AE C). With the exception of the education loans, Applicant’s credit reports reflect no other financial problems (GE 3-5; AE D).

Applicant's character references (AE A), who include two long-time coworkers, a long-time friend, and his oldest child, consider him honest and trustworthy, and recommend him for his security clearance. However, none of them recites any knowledge of the issues raised by the SOR.

## **Policies**

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>2</sup>

## **Analysis**

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties for which he did not undertake timely resolution.<sup>3</sup> Applicant knew he had significant delinquent education loan debt no later than 2014, yet undertook no effort to address the indebtedness until at least January 2019.

---

<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>19(a) inability to satisfy debts; (b) unwillingness to satisfy debts regardless of the ability to do so; (c) a history of not meeting financial obligations;

Applicant meets none of the mitigating conditions for financial considerations. The financial problems were recent, not infrequent, and, as they were deliberate, not clearly due to circumstances unlikely to recur.<sup>4</sup> Applicant’s financial problems were due to his deliberate choice to address his children’s financial obligations while ignoring his own delinquent education debt. These were not circumstances beyond his control, and he was not responsible in addressing the debts, even after his subject interviews.<sup>5</sup> Applicant has had no credit or financial counseling, and at best, the debt is half-way to being resolved.<sup>6</sup> His belated effort does not constitute a good-faith effort to address his debts.<sup>7</sup> In addition, while the Applicant managed the required rehabilitation payments, and may have the means to meet whatever payment is required going forward, he has not demonstrated a track record of payments on the new plan. Furthermore, Applicant’s “whole-person” evidence—in which none of his references appear to be aware of the SOR issues—is insufficient to mitigate the security concerns raised by his inaction on the education loans. Accordingly, I conclude Guideline F against Applicant.

Nevertheless, the Government did not establish a case for disqualification under Guideline E. Applicant misconstrued the question regarding financial difficulties and consequently lacked intent to mislead the Government.<sup>8</sup> Accordingly, I resolve Guideline E for Applicant.

### Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant
Paragraph 2. Guideline E:	FOR APPLICANT
Subparagraph a:	For Applicant

---

<sup>4</sup>¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

<sup>5</sup>¶20(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

<sup>6</sup>¶20(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

<sup>7</sup>¶20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

<sup>8</sup> ¶ 16(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

## **Conclusion**

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

---

JOHN GRATTAN METZ, JR  
Administrative Judge