



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-01865  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: Leon J. Schachter, Esq.  
02/10/2020

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns arising from his failure to pay for defaulted student loans that he had cosigned despite having the financial means to do so. National security eligibility for access to classified information is denied.

**Statement of the Case**

On February 28, 2018, Applicant completed and signed his security clearance application (SCA). On June 26, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The action was taken 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* (AG) effective within the DOD on June 8, 2017.

Applicant filed a response to the SOR on July 25, 2019, and requested a hearing before an administrative judge. Applicant admitted all of the SOR allegations, and

submitted seven documents with his SOR response. On September 26, 2019, the case was assigned to me. On October 11, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 13, 2019. Applicant's counsel requested to change the hearing date to November 12, 2019, due to a scheduling conflict. Department Counsel did not object to the request. I granted the request and an amended notice of hearing was issued on October 30, 2019. The November 12, 2019 hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-5. Applicant testified, and offered Applicant Exhibits (AE) A through G that were previously submitted with the SOR Response, and he also submitted an additional seven documents labeled AE H-N. I admitted all proffered exhibits into evidence without objection, except for GE 3, which is addressed below. DOHA received the hearing transcript (Tr.) on November 21, 2019. The record was held open until December 11, 2019, in the event either party wanted to submit additional documents. Applicant timely submitted five documents, which I labeled AE O-S. He requested I hold the record open for an additional three weeks to see if a response from the collection law firm was forthcoming. On January 3, 2020, Applicant's counsel sent an e-mail confirming the collection law firm had not replied to the two certified letters sent in November 2019, and the third certified letter sent in December 2019. I labeled the January 3, 2020, e-mail as AE T, admitted all post-hearing documents without objection, and the record closed. (Tr. 54-55, 82-83; AE P)

### **Procedural Matters**

Applicant objected to the admission of GE 3, which was a report of Applicant's background interview dated August 14, 2018. He stated that the report could not be admitted without an authenticating witness. Department Counsel did not have an authenticating witness at the hearing. The only portion of the Subject Interview that I considered in this decision was the section that was authenticated by Applicant at the hearing. Specifically, Applicant became aware in approximately June 2018 from the security office that there were potential financial issues from a student loan collector listed on his credit report. Applicant received this notice about two months before his background interview that took place in August 2018. Nothing further from Applicant's background report was authenticated by him, or considered by me in this decision. (Tr.12-13, 32-36; GE 3)

Applicant made a motion for me to take administrative notice of sections 501-101 and 501-102, of State A's statute of limitations. State A is also the state of Applicant's residence. Department Counsel did not object to the submission of State A's statute of limitations, but noted that he did not believe the statute to be relevant to the three charged-off student loans at issue in this hearing. Department Counsel believed the three student loans had been guaranteed by the federal government, and all of the loans were currently governed by federal law. I ruled that I would take administrative notice of State A's statute of limitations, but whether the state law was applicable would later be determined by me, and the supporting evidence that would be presented in this case. Post-hearing documents submitted by Applicant confirmed that the student loan was a private student loan. (Tr. 14-17; GE 1; AE A4, AE D, AE Q, AE R)

## Findings of Fact

Applicant is 47 years old. He graduated from high school in 1990, and he attended college for a couple of years. In 1993, he enlisted in the U.S. Army, and he received an honorable discharge in March 1997. Applicant re-enrolled in college and in 1999, he earned a bachelor's degree in accounting. He married in 2001, and has four daughters, and a son, age two. (Tr. 25-26, 65-66; GE 1; AE B, AE C, AE H)

Applicant was employed in September 2018 by a defense contractor as a project manager earning an annual salary of \$145,000. He lost his interim DOD security clearance in June 2019, and he could no longer maintain employment with the DOD contractor. However, Applicant is still being sponsored by this employer for a DOD security clearance. In September 2019, Applicant was hired by his current employer. This company is requesting he obtain a position of trust for his current job duties as a manager. His current annual salary is \$120,000. His spouse is also employed making an annual salary of \$100,000. Applicant stated that if his DOD security clearance is granted, he will reapply for employment with his previous employer. (Tr. 60-63; GE 1; AE B, AE C)

Applicant has not suffered from financial problems in the past and his credit rating has been good for many years. For this very reason, Applicant was asked by a cousin to cosign for him on a student loan so that he could attend college. His cousin's credit rating did not qualify him to obtain a student loan in his name only. Applicant could not recall many details of the event since it occurred in 2004, but he cosigned the student loan paperwork which he thought was private, and acknowledged that he understood as a cosigner, he was legally responsible for the loan in the event his cousin did not make the loan payments. His cousin attended college, and in 2005, Applicant was asked again to cosign on a student loan so that his cousin could continue with his college education. Applicant cosigned another student loan in 2005. In 2006, when he was asked a third time to cosign on a student loan, Applicant admitted that he was reluctant to do so. He testified that his family members strongly urged him to cosign the third student loan, which he did in 2006. (Tr. 26-27, 55; AE F, AE I, AE K)

In approximately 2010, Applicant received phone calls from Sallie Mae and discovered that his cousin had stopped making his student loan payments. Applicant began making the student loan payments in 2010. During a conversation he had with his cousin, he agreed to assist in making the loan payments if his cousin was unable to do so, however, it was not his intention to pay the student loans in full for his cousin. In about 2011, his cousin resumed making the student loan payments, and he told Applicant that he would attempt to have his name removed from the loan documents. Applicant's cousin fully acknowledged that it was his responsibility to pay for the student loans that enabled him to attend college. (Tr. 28-30, 56-59)

In approximately June 2018, while Applicant was working on a government project, the security office notified him there was a potential problem with three student loan collection entries on his credit report. Applicant realized that his cousin must have stopped making student loan payments once again. Applicant contacted the student loan creditor,

and he was given the contact information for the law firm handling the student loan collection. Applicant contacted the law firm and asked how he could get these charged-off student loans removed from his credit report. He was advised to pay the loans. Applicant then asked how they would remove the negative entries from his credit report, but the law firm informed him that they do not report to the credit bureau agencies. After hearing this, Applicant made the decision to not pay the three charged-off student loans since he did not see the benefit of doing so. (Tr. 32-35, 37-40, 64-65) At the hearing he stated:

If I had to go back and do it all over again, I would have just paid it because now when we sit here – I was on a project in June [2019] and my [interim] security clearance was pulled and I lost a substantial amount of money because that happened. I mean, in retrospect I would have just paid it. (Tr. 40)

Applicant submitted a certified letter to the student loan creditor in July 2019, after receipt of the SOR. The student loan creditor replied in August 2019, and informed him that they could not remove the negative financial information from his credit report because the information reported was accurate and in compliance with federal law. (Tr. 32-40, 59, 64-65; AE L, AE M)

SOR ¶¶ 1.a through 1.c allege Applicant is indebted to a student loan collector in the total amount of \$38,438, for charged-off student loans that were opened in 2004, 2005, and 2006. Applicant admitted these allegations in his response to the SOR.

Applicant testified that his cousin did not graduate from college. He has suffered with mental health issues and cannot repay the student loans. Applicant's primary focus was to have all negative credit removed from his credit report. The same month that his security clearance hearing was held, Applicant sent out two certified letters to the collection law firm regarding the three charged-off student loans. (AE N) In the letters he requested an IRS Form 1099-C if the student loan debt had been cancelled or forgiven. If a 1099-C was not available, he asked for confirmation if the law firm chose not to pursue legal collection due to State A's statute of limitations. If the first two scenarios were not valid, Applicant asked the law firm to provide instructions on how he could arrange a payment plan. Applicant stated he understood that written-off student loans did not mean that they were forgiven. As of the date of the hearing, Applicant had not received a response from the collection law firm. Post-hearing submissions provided by Applicant showed a third certified letter had been sent to the collection law firm about a month after the hearing. As of January 2, 2020, the collection law firm had not replied to the three certified letters. (Tr. 41-48, 64; AE G, AE L, AE N)

Applicant provided character reference letters that describe him as a reliable and trustworthy employee. He is considered an honest person with integrity, and he has an excellent work ethic. He has received several professional certificates and recognition for his commendable service. (AE A, AE E, AE J)

## Policies

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 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, these guidelines are applied 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 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 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).

## Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

AG ¶ 19 includes a disqualifying condition that could raise a security concern and may be disqualifying in this case: "(b) unwillingness to satisfy debts regardless of the ability to do so." The SOR alleges three charged-off student loans totaling \$38,438. Applicant was a cosigner on these loans and understood he was legally responsible to pay the loans in the event his cousin did not do so. The above disqualifying condition applies. Further inquiry about the applicability of mitigating conditions is required.

Five financial considerations mitigating conditions under AG ¶ 20 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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

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)).

Applicant’s only delinquent debt involves three charged-off student loans that have been delinquent for a number of years. He is current on all of his other financial obligations. He was fully aware that being a cosigner meant that he and the borrower share the legal responsibility for repaying a loan and making sure payments are made on time. In this case, Applicant agreed to be a cosigner and made it possible for his cousin to be approved for three student loans and pursue a college education. As cosigner, Applicant shares the responsibility with his cousin for on-time loan payments. If the borrower cannot—or does not—make payments, then the cosigner needs to make the payments for him.

To his credit, Applicant made some payments on the student loans in 2010-2011, after he was notified by Sallie Mae that his cousin was not paying the loans consistently. His cousin’s mental health issues and his inability to repay the student loans are circumstances beyond Applicant’s control. However, to receive full credit for this mitigating condition, Applicant must demonstrate that he acted responsibly under the circumstances. In June 2018, Applicant was notified by the security office that a student loan collector was listed on his current credit report. His primary focus was to have the negative financial information removed from his credit report. He did not think about his legal obligation to repay the student loans he cosigned in 2004, 2005, and 2006. In fact, he did not initiate a good-faith payment agreement with the law firm after he learned they did not remove negative information from credit bureau reports. A year later, in June 2019, Applicant’s interim security clearance was withdrawn due to his financial security concerns, and he lost his employment.

Whether the student loans are private, or federally guaranteed, may limit the legal rights of the creditor to collect; however, it does not control disposition of this case. Assuming the state statute of limitations caused his private student loans to be legally uncollectible does not necessarily mean that the creditor would refuse repayment of the loans. To be clear, the statute of limitations only bars the creditor from successfully suing – it does not end the security significance of the generation of the debt and the failure to responsibly take actions to ensure repayment over the years. In the context of debt collection, a statute of limitations is a set amount of time that a creditor has to sue to collect an unpaid debt. A state’s statute of limitations applies to private student loans but not to federal student loans. Applicant’s recent decision to not repay or attempt to repay the cosigned student loans, whether they were private or federally guaranteed, weighs against him. When he talked to the collection law firm in 2018, he could have responsibly addressed the loans with a reasonable repayment plan, especially since he was financially capable of doing so. He chose not to make any good-faith efforts to repay the debts.

Applicant's documentation showing his attempts to communicate with the creditor are dated after his receipt of the SOR. The full year he failed to address his financial obligations as cosigner of the student loans shows that he is not reliable and did not use good judgment. Under the current circumstances, there are not clear indications that the financial problem is being resolved. Financial considerations security concerns are not 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 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant's recent attempts to communicate with a student loan creditor after the receipt of the SOR does not absolve him from his past neglect of addressing student loans he cosigned for a family member. To his credit, he has been responsible for his own personal financial obligations, but his unwillingness to make good-faith efforts to repay the charged-off student loans when he has the financial means to do so shows he cannot always be trusted to fulfill his promises. After evaluating all the evidence in the



context of the whole person, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge