



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



In the matter of: )  
)  
) ISCR Case No. 19-03370  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Rashid Williams, Esq., Department Counsel  
For Applicant: John Berry, Esq.  
03/08/2021

**Decision**

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

**Statement of the Case**

On August 18, 2020, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR in September 2020 (undated) and requested a hearing. This case was assigned to me on November 24, 2020. A hearing was

scheduled for January 7, 2021, and heard on the date as scheduled. At the hearing, the Government's case consisted of four exhibits (GEs 1-4). Applicant relied on 17 exhibits (A-Q) and four witnesses (including himself). The transcript (Tr.) was received on January 27, 2021.

### **Procedural Issues**

Before the close of the proceedings, Applicant asked to leave the record open to afford him the opportunity to supplement the record with about his wife's TSP retirement account and progress on the remaining amounts owing on his student loans. For good cause shown, Applicant was granted 14 days to supplement the record. The Government was afforded seven days to respond. Within the time permitted, Applicant provided a letter from his wife detailing their payments on the debts covered by the SOR as well as their payoffs of the two remaining student debts owed: SOR ¶¶ 1.g-1.h. Applicant's post-hearing submissions were admitted as AEs R-S without objections for consideration.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated nine delinquent debts (all but two, SOR ¶¶ 1.f and 1.i) representing delinquent student loans. Allegedly, these debts remain unresolved and outstanding.

In his response to the SOR, Applicant denied all but one (SOR ¶ 1.f) of the Guideline F allegations covering his debts with explanations. He claimed his private student loans were covered by SOR ¶¶ 1.a-1.c were paid through a settlement agreement in September 2017. He claimed that his brother and co-borrower of the student loan covered by SOR ¶ 1.d was paid through a settlement agreement with a collection agency, pursuant to which he continues to make \$25 monthly payments. While admitting to being a co-borrower on the loan, Applicant claimed to be working with his brother to either pay off the loan or otherwise resolve his co-borrowing obligation. Admitting the delinquent debt covered by SOR ¶ 1.f, he claimed to be making regular monthly payments on this loan and has reduced the principal balance to \$3,982. He further claimed the student loans covered by SOR ¶¶ 1.g and 1.h are in current status. And, he claimed the medical debt covered by SOR ¶ 1.i is paid in full.

### **Findings of Fact**

Applicant is a 40-year-old wireless network engineer for a defense contractor who seeks a security clearance. (GE 1; Tr. 18) Applicant denied all but two of the allegations in the SOR with explanations. Findings of fact follow.

### **Background**

Applicant married in July 2006 and has three children (ages 5, 7, and nine) from this marriage. (GE 1; Tr. 20) He earned a high school degree in June 1997 and attended college classes between August 2003 and May 2004 without earning a

degree. (GEs 1-2) He earned a bachelor's degree in June 2008 in management information systems. (GE 1; Tr. 19)

Applicant enlisted in the U.S. Army in July 1997, and he served 10 months of active duty (July 1997 through May 1998) before receiving a general discharge under honorable conditions in May 1998. (GE 1)

Since August 2017, Applicant has been employed by his current employer. (GE 1 and AE E; Tr. 19-22, 36-37) He reported periods of unemployment between February 2017 and August 2017 and between May 2002 and August 2004. (GE 1) Previously, he was employed by other contractors and making \$150,000 a year. (GE 1; Tr. 21-22) Applicant's wife is employed by the DoD. (AE R; Tr. 21)

### **Applicant's finances**

Before Applicant lost his job in February 2017, he maintained his finances in good order. (AE R; Tr. 19-20) Prior to losing his job, he and his wife purchased a home for their family and three children. (AE Q) During his seven months of unemployment, he could not afford to cover the student loans he co-signed with his brother.

Between August 2003 and February 2008, Applicant took out seven different student loans that were guaranteed by the U.S. Department of Education (DoE). (GEs 2-4) These loans exceeded \$80,000 and were used to finance Applicant's college education classes. Credit reports document that these loans became delinquent in 2017 and were charged off in 2019. (GE 3)

Besides his student loans, Applicant accumulated delinquent debts with two other creditors listed in the SOR. These debts are covered by SOR ¶ 1.f (a credit card debt for \$4,192) and SOR debt ¶ 1.i (a medical debt for \$26). (GEs 2-3)

Since returning to full-time employment, Applicant has addressed each of his SOR debts. He documented payoffs of SOR debts ¶¶ 1.g (\$623) and 1.h (\$510) with two payments of \$404.67 and \$324.65, respectively, leaving current balances of roughly \$320 with SOR creditor 1.g and a virtually zero balance with SOR creditor 1.h (AEs O-P and S; Tr. 21-22, 35-36, 63-65) Applicant also validated his 2019 payoffs of his remaining student loans covered by SOR ¶¶ 1.a-1.e with loans from his wife's Government-funded TSP retirement accounts and help from his brother on one of his co-signed loans. (AE K; Tr. 63-67) On this latter loan, Applicant and his wife continue to monitor his brother's payments. (Tr. 63-65) He documented his compliance with the payment agreement he has with SOR creditor 1.f and the \$26 medical account balance with SOR creditor 1.i (AEs A and J-P; Tr. 23-31)

With his documented evidence of payments and payment agreement with SOR creditors 1.f (with monthly payments of \$320) and 1.i, Applicant successfully resolved all of the listed delinquent debts covered by the SOR (Tr. 32). He is now current with all of his accounts covered in his credit reports. (GEs 2-3 and AEs A and S; Tr. 22-23, 25, and 32-33)

Applicant and his wife maintain a monthly budget. (AE H; Tr. 64-65) Their monthly budget allots monthly expenses for the mortgage and other household expenditures, which total \$9,710. (AE H) With reported annual income from his wife and himself of over \$284,000, Applicant would appear to have ample resources to maintain his finances in good working order in the future. (AEs F-G)

### **Character references and awards**

Applicant is held in high regard by his supervisors (past and present), coworkers, and friends who are aware of the financial issues affecting his security clearance. (AE I; Tr. 73-75, 83-87) All of them credit Applicant with honesty and integrity, good judgment, reliability, and strong moral ethics. Each of his character references consider him to be worthy of holding a security clearance or position of trust. Applicant has received numerous certificates of recognition by his employer that credit him with displaying outstanding attributes in support of his employer's organization. (AE D)

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not

require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

### **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be

a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

### **Analysis**

Security concerns are raised over Applicant’s accumulation of delinquent debts (mostly related to student loans). Applicant’s accumulation of delinquent debts (both student loans and consumer accounts) warrant the application of two of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”; and 19(c), “a history of not meeting financial obligations.” Each of these DCs apply to Applicant’s situation.

Applicant’s admitted debts negate the need for any independent proof. See Directive 5220.6 at E3. 1.1.14; *McCormick on Evidence*, § 262 (6<sup>th</sup> ed. 2006). His admitted debt delinquencies are fully documented and create some initial judgment issues. See ISCR case No. 03-01059 at 3 (App. Bd. Sept. 24 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder’s demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies

Historically, the timing of addressing and resolving debt delinquencies are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23. 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant’s

history of financial difficulties associated with his delinquent student loans and other debts have since either been paid off or are paid in accordance with payment agreements.

Extenuating conditions played a major role in Applicant's debt accumulations during a period of unemployment in 2017. Application of mitigating condition (MC) 20(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," fully applies to Applicant's situation. Once he returned to full time employment, he addressed all of his delinquent accounts and either paid them off or entered into payment arrangements that he has continued to honor with regular monthly payments, while monitoring his brother's payments on the student loan his brother co-signed for. With his payment history, Applicant may also claim the mitigating benefits of MC ¶ 20(d), " the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of accrued debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, he has addressed all of his debt delinquencies covered by the SOR. Most of the debts he has paid in full. With the remaining creditors he has settlement agreements in place that are in compliance with the payment terms.

### **Whole-person assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with minimum standards for holding a clearance. Applicant is entitled to credit for his military and civilian contributions to the DoD and defense industry, respectively. His initiated repayment of the debts covered by the SOR, when combined with his military and civilian contributions, are enough at this time to overcome his past account delinquencies (mostly with his student loans) and restore his finances to current status.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

### **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:

Guideline F (FINANCIAL CONSIDERATIONS): FOR APPLICANT

Subparagraphs 1.a-1.i:

For Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Roger C. Wesley  
Administrative Judge