



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



In the matter of: )  
)  
) ISCR Case No. 03710  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: William H. Henderson, Personal Representative

12/07/2020  
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**Decision**  
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WESLEY, ROGER C. Administrative Judge

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

**Statement of the Case**

On February 5, 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); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (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 on March 2, 2020, and elected to have his case decided on the basis of the written record, in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on September 2, 2020, and interposed no objections to the materials in the FORM. He timely responded to the FORM on October 7, 2020 and provided additional exhibits. His supplemented exhibits were admitted without objection as Items 8 through 36.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated (a) seven delinquent student loan debts exceeding \$46,000 and (b) four delinquent consumer debts exceeding \$2,300. Allegedly, these debts remain unresolved and outstanding.

In his response to the SOR, Applicant denied each of the allegations covering delinquent debts with explanations. He claimed he is making payments to his student loan lender pursuant to a payment arrangement he has with the lender. He further claimed he is making payments to his SOR ¶ 1.h creditor and has paid off his SOR ¶ 1.j and 1.k debts, attaching payment documentation. Addressing his SOR ¶ 1.i debt, he denied any knowledge of this debt.

### **Findings of Fact**

Applicant is a 66-year-old employee of a defense instructor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in June 1985 and divorced in February 1993. (Item 4) He has two children from this marriage. He remarried in March 1993, separated in January 2017, and reconciled in 2018. (Items 4) He has one child from this marriage. Although it is unclear when he earned a high school diploma, he earned an Associates of Arts degree (AA) in information technology in November 1999. (Item 4) Applicant reported no military service.

Since April 2012, applicant has worked for his current employer as a senior network specialist. (Item4) Between April 2005 and April 2012, he was employed as a network specialist for another defense contractor.

### **Applicant's finances**

Between 2011 and 2013, Applicant accumulated multiple student loans with SOR creditor §§ 1.b-1.g (Items 5-7) Credit reports document that these student loans became delinquent and are no longer eligible for forbearance since July 2018. (Items 5-7) He accrued other student loans with SOR creditors 1.a and 1.j in July 2018.

Applicant attributed his financial problems with his creditors to his spousal separation and the extraordinary expenditures he incurred in connection with his air conditioning system replacement in 2017. (Item 8) During his separation, his spouse lived with her sister and did not provide any financial support to him or their children. (Item 8) While separated, Applicant bore sole responsibility for maintaining the home, maintaining their financial obligations, and supporting their children. (Item 8) Once his wife moved back into their home in late 2018, she resumed her salary contributions to their family expenses. (Item 8)

Applicant has since addressed his delinquent student loans covered by SOR ¶¶ 1.b-1.g. He documented monthly payments to the student loan creditor between September 2010 and September 2017 in payments amounts ranging between \$22 and \$56. (Items 9-15)

In August 2020, Applicant received a letter from the U.S. Department of Education (DoE) approving his acceptance into a rehabilitation program for each of the covered DoD loans based on the past payments he made. (Item 12) The DoE confirmed that Applicant's monthly payments qualified him for rehabilitation that warranted the deletion of all default entries in his credit reports. (Item 12)

Based on his confirmed rehabilitation, the DoE found Applicant to be "again eligible for all of the benefits associated with the rehabilitated loans before default." (Item 12) These benefits were considered to include various deferments and forbearances, as well as a variety of repayment plan options. (Items 12)

Despite his approved DoE eligibility to have student loans returned to forbearance eligibility status through December 2020, Applicant has opted to continue making monthly payments. (Items 10-15) Applicant's payment history documents his regular monthly payments to his DoE student loan creditor (in amounts ranging from \$100 to \$13) between August 2018 and July 2020. (Items 11-15)

Applicant has also addressed his other SOR debts with documented payment plans and pay offs. His documentation includes ten payments to the creditor in SOR § 1.h since December 2019, in amounts ranging between \$25 and \$45 for a total amount of \$285 on a carried balance of \$1,439. (Item 16) Under his installment arrangement with this student loan creditor, he has continued to make monthly payments through May 2020 on the debts that became delinquent in October 2018. (Items 16-17) Through his payment efforts, he has reduced the delinquent balance from a high of \$1,774 to a current balance owed of \$1,374. (Items 17-18)

Of the remaining three consumer debts covered in the SOR, Applicant could identify only two as debts belonging to him, SOR § 1.e., \*\*\*\*does this belong?\*\*\*\*) the medical debt identified in SOR ¶ 1.i for \$520, and the student loan debt covered by SOR ¶ 1.j. (Items 3, 8 and 20) For these two debts, Applicant documented that he is free and clear of any amounts owed to these creditors. (Items 3, 8, and 20)

Applicant's current financial status is documented with evidence of stabilized income and responsible management of his expenses. He reported net monthly income of \$4,885 for himself and \$4,000 for his wife. (Item 21) This translates into annual income of \$57,600 for himself and \$48,000 for his wife. He reported joint monthly expenses for him and his wife of \$4,174, and a net monthly remainder of \$796. (Items 21-25)

### **Character references and performance evaluations**

Applicant is highly regarded by his supervisor, colleagues, and friends. (Items 28-33) Uniformly, they credit him with honesty, loyalty, and dependability in the discharge of his network technician responsibilities. (Items 28-33) Applicant enjoys an excellent reputation in his community. His performance ratings reflect solid ratings for ethics, safety, work quality, teamwork, technical skills, goal orientation, and adaptability for the last three rating years. (Items 34-36)

### **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 student loan and consumer debts. Applicant’s history of financial difficulties 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.

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 tax filing failures and 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 accumulation of student loan and consumer debts over a period of years raise initial security concerns over the stability of his finances.

Since 2019, Applicant has made considerable progress in resolving his financial delinquencies with documented payoffs and payment plans. His concerted initiatives enable him to take advantage of three mitigating conditions (MCs). MC ¶¶ 20(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”; 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 medial emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances"; and 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts" apply to Applicant's situation.

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 debts, and implicitly where applicable the timely resolution of such debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, he has exercised significant responsibility in addressing his debts when his spousal circumstances improved and provided documented evidence addressing his delinquent debts in issue.

### **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. In Applicant's case, he has provided strong evidence of his addressing his delinquent student loan and consumer debts.

Further, Applicant has provided important documented accounts of the high regard his supervisors, colleagues, and friends have for him with respect to his judgment, reliability, and trustworthiness. His performance evaluations reflect strong contributions to his employer specifically and to the U.S. defense industry generally. Overall, Applicant's efforts in addressing his finances and satisfying the requirements of good judgment, reliability, and trustworthiness in his professional and personal life enable him to meet the minimum requirements for holding a security clearance.

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-k

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