



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



In the matter of:

)  
)  
)  
)  
)

ISCR Case No. 20-00001

Applicant for Security Clearance

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel

For Applicant: *Pro se*

03/18/2021

**Decision**

Curry, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by her delinquent student loans. Clearance is granted.

**Statement of the Case**

On May 14, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action 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 Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On May 20, 2020, Applicant answered the SOR, admitting subparagraphs 1.a, 1.b, 1.c, and 1.g, and denying subparagraphs 1.d through 1.f. She requested a decision without a hearing. On November 6, 2020, Department Counsel prepared a File of Relevant Materials (FORM) setting forth the Government's argument in support of the SOR, together with supporting documentation.

Applicant received a copy of the FORM on November 13, 2020, and was instructed to file any objections to this information, or to supplement the file within 30 days of receipt. On November 30, 2020, Applicant filed a response. Department Counsel did not object. On January 28, 2021, the case was assigned to me.

### **Findings of Fact**

Applicant is a 37-year-old married woman with two children, ages five and seven, and two adult stepchildren. She is the primary care provider for her family. (Response, Attachment (Att.) 6) She earned a bachelor's degree in 2007, a master's degree of business of administration (MBA), and a master of management (MSM) in 2014. (Item 3 at 12-13; Response at 3, 8) She earned the MBA and MSM while working at a full-time job as a financial analyst and various part-time jobs. (Item 3 at 12-15, 18; Response at 8) She has been working in the financial-analysis field for various government contractors since 2007, and has been working for her current employer since 2019. She has held a security clearance since 2009.

Applicant is highly respected on the job and in her community. She was "very proficient within the various roles she supported" during her first year on the job. (Response, Att. 8) Between 2015 and 2019, Applicant's ratings with her previous employer ranged from very good to exceptional. (Response, Atts. 9-11) When she left her previous employer to accept the job with her current employer, "the indelible impact of her departure was felt immediately." (Response, Att. 1)

Applicant's family was poor. (Response, Att. 2) Consequently, she was solely responsible for financing her college and graduate school education. Beginning in 2003, when Applicant was 19, she took out multiple public and private student loans. Satisfying her loans was a struggle, particularly during the first two years after college graduation when she earned \$12 per hour. (Item 1 at 18) She had to work at several part-time jobs to make ends meet and to satisfy her loans. She managed her finances, in part, by obtaining deferrals on her private student loans.

In September 2015, Applicant's first child was born, and she no longer had the time to work any part-time jobs. (Response at 4; Item 2 at 49) Over the next several months, her expenses increased significantly, as she had to pay daycare after returning to work, and her student loans came out of deferral status. (Response at 4; Response, Atts. W - X) By early 2016, Applicant's monthly expenses had increased to approximately \$1,962 more than her monthly income. (Response at 4)

In March 2016, Applicant filed for Chapter 7 bankruptcy protection, as alleged in SOR subparagraph 1.g. (Item 7). The court granted the petition in July 2016, discharging approximately \$38,000 of debt. (Item 7 at 3-4)

In January 2017, Applicant satisfied a public student loan, unlisted on the SOR. (Response, Att. E) In March 2018, Applicant hired a financial planner. She worked with the

planner through November 2018, and learned “about ways to manage cash flow, increase savings, and appropriately manage debt.” (Response, Att. 7)

In November 2019, Applicant sold her house. (Item 2 at 7) That month, she satisfied the credit-card debt alleged in SOR subparagraph 1.d, totaling \$4,585, through a \$3,200 lump-sum payment, using the proceeds from the sale of her home. (Answer at 11) Applicant satisfied subparagraph 1.e, a debt with a principal balance of \$817 and an overdue payment totaling \$189, in its entirety through two payments in March 2020. (Item 2 at 14)

Subparagraph 1.f is a private student loan account that has been transferred to a new lender. It totals \$5,735. Applicant has been making regular payments for more than three years, and the account is in current status. (Response, Att. F; Response, Att. N)

The student loan accounts alleged in subparagraphs 1.a through 1.c, totaling approximately \$126,000, remain outstanding. Applicant contends that the loans were predatory because she was, for the most part, timely paying the interest-only amounts between 2005 and 2015, but the balances due kept accruing at usurious rates, and became completely out of control when she placed them in forbearance. (Item 2 at 6-7; Response, Att. N) Moreover, she contends that she was not properly informed about the difference between public and private loans, and the various risks associated with placing loans in forbearance, when she applied for them as a teenager. Multiple lawsuits are pending against this student loan creditor throughout the country, including a lawsuit filed by the U.S. Consumer Financial Protection Bureau (CFPB) which alleges that the creditor “failed borrowers at every stage of repayment,” “purposefully made borrowers pay more on their loans than they needed to,” and provided “bad and sometimes false information.” (Response, Att. W)

Applicant researched refinance options through multiple banks. (Response, Atts. L and M) None are feasible at this time because Applicant’s income was reduced at the beginning of the COVID-19 pandemic in March 2020, as she had to take partial time off work to oversee her children’s distance-learning education. (Response at 4; Response, Att. P) Although she successfully applied for financial assistance under the Coronavirus Aid, Relief, and Economic Security Act, she is only making two thirds of the salary that she made before the pandemic triggered the shutdown of her oldest child’s school and the partial shutdown of her youngest child’s daycare center. (Response, Att. P)

Applicant maintains a budget. Per the budget, she pays \$106 monthly towards the student loan debt alleged in subparagraph 1.f, and \$473 per month for a student loan that is not alleged in the SOR. She has \$96 in monthly, after-expense income. (Response at 21) Over the next two years, Applicant’s daycare cost will cease once her youngest child enters kindergarten, and Applicant will have satisfied the debt alleged in SOR subparagraph 1.f. She will then seek to consolidate the student loans alleged in SOR subparagraphs 1.a through 1.c.

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## Analysis

### Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18, as follows:

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 and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information . . . . An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has a history of delinquent debts. Although she obtained a discharge of approximately \$38,000 of non-priority debts through a bankruptcy action, she continues to owe in excess of \$100,000 in delinquent student loans. This generates security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable under AG ¶ 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;

(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.

Applicant presented evidence that she has been making payments towards the satisfaction of the debt alleged in SOR subparagraph 1.f for more than three years, and that it is in current payment status, contrary to the SOR allegation. I conclude that AG ¶ 20(e) applies. I resolve subparagraph 1.f in Applicant's favor.

Applicant has either satisfied or is in the process of satisfying all of the loans except the student loan accounts alleged in SOR subparagraphs 1.a through 1.c. She has received financial counseling for the problem, maintains a budget, is making significant monthly payments towards the satisfaction of another student loan which is not alleged, and has a plan for addressing the delinquent SOR student-loan accounts once her youngest child exits daycare and she finishes paying off the debt alleged in SOR subparagraph 1.d. Although she has not filed suit against the creditor who holds the student-loan accounts alleged in subparagraphs 1.a through 1.c, her contention that the loans were predatory has merit in light of the pending federal CFPB complaint against the creditor, alleging unfair lending practices. In sum, Applicant's financial problems were largely based upon circumstances beyond her control, she has acted responsibly under the circumstances, and is making a good-faith effort to repay her creditors. I conclude AG ¶¶ 20(a) through 20(c) apply.

### **Whole-Person Concept**

Applicant did not incur debt to purchase frivolous items or to engage in otherwise profligate spending. Instead, she used debt to finance her education, earning three degrees, two of which she earned while simultaneously working at multiple jobs. During the course of pursuing post-graduate degrees while working, starting a family, and managing her college student loans, she lost control of her finances. Since obtaining a Chapter 7 bankruptcy discharge, she has been steadily regaining control of her finances, organizing them, and developing a plan to eliminate them. Considering these factors, in tandem with her exemplary work performance and character references, I conclude that Applicant has mitigated the 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.g:

For Applicant

### **Conclusion**

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

Marc E. Curry  
Administrative Judge