



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-01368
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
For Applicant: *Pro se*

06/23/2021

**Decision**

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 22, 2019. On September 14, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA CAF acted under Executive Order (Exec. Or.) 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 adjudicative guidelines (AG) effective June 8, 2017.

Applicant answered the SOR on October 5, 2020; November 27, 2020, and December 2, 2020 (Ans.), and requested a decision based on the written record without a hearing. The Government's written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on December 7,

2020. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM and submitted a reply dated January 14, 2021, and supporting documents collectively marked as Applicant Exhibit (AE) A. The case was assigned to me on February 25, 2021. Neither Applicant nor Department Counsel objected to any documents submitted for the record. Government Exhibits (GE) 1 through 6 and Applicant Exhibit (AE) A are admitted into evidence without objection.

### **Findings of Fact**

Applicant is a 31-year-old mathematician, employed by a government contractor since May 2019. He is also employed as a retail service technician since May 2019. He was unemployed from October 2018 to December 2018, and held various laborer positions since leaving college. He earned a bachelor's degree in 2014 and a master's degree in 2017. He married in March 2018 and has one child born in 2019.

The SOR alleges under Guideline F that Applicant is delinquent on 16 debts totaling about \$135,000. Applicant admitted to all of the SOR debts. Fourteen listed debts are student loans owed to the U.S. Department of Education (DOE) (12 debts totaling about \$102,783) and Sallie Mae (two accounts totaling about \$25,771). The remaining two allegations list consumer debts. These debts include SOR ¶ 1.o in the amount of \$1,570 that was settled and paid in full in July 2020. The final consumer debt, SOR ¶ 1.g is a debt for \$7,045. This debt has been resolved as part of a two-year repayment plan and the first installment was made in September 2020.

Applicant held a series of low-paying labor positions since graduating from graduate school in an effort to "keep a roof over my family's head." He discussed loan repayments on his student loans, but was unable to make the "up-front payments required by the agencies." (GE 2) His most significant employment with a defense contractor was obtained in 2019. Since the end of December 2020, he was promoted and received a pay raise to an annual income of about \$80,000. Applicant also contacted his consumer creditors and paid one debt and entered into a repayment plan on another. He was also able to enter into repayment schedules with DOE and Sallie Mae to consolidate and begin repayments plans. He started payments in both plans, and appears to have sufficient monthly income to pay debts and expenses.

Applicant submitted a letter of support from his current manager who recommends Applicant as a trustworthy employee who complies with all rules and regulations. Applicant also noted his 100% disability from partial hearing impairment, and his child has the same disability. Applicant fully accepts his financial situation and asserts that since obtaining his current position, he has made significant progress in resolving his consumer debts and student loans.

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility 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, an administrative judge applies these guidelines 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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. *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 (4th 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, e.g.*, ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. *See, e.g.*, ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern under this guideline is set out in AG ¶ 18:

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s admissions and documentary evidence in the record are sufficient to establish disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

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

The Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good- faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” (internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant incurred financial delinquencies since leaving graduate school and while unemployed or underemployed. He began to address his debts once he was employed by his current employer. Since his promotion, he began repaying his student loans and he resolved two consumer debts. Applicant made contact with creditors, arranged payment plans and paid one debt in full. Although I do not have evidence of professional financial counseling, Applicant has worked diligently to arrange repayment plans on his student loans and another consumer debt. His current credit report shows no other debts in collections.

Overall, Applicant made significant efforts to resolve his debts once he became financially secure. I am convinced Applicant now makes good financial decisions, and his financial status no longer casts doubt on his current reliability, trustworthiness, and good judgment. Applicant’s financial problems resulted from periods of unemployment and underemployment, but since a promotion with his current employer, he has acted responsibly to resolve debts. I do not believe that further financial problems are likely to recur. AG ¶¶ 20(a), (b), and (d) apply.

### **Whole-Person Concept**

The ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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. AG ¶¶ 2(a), 2(c), and 2(d). The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I also considered Applicant’s efforts to resolve his debts since he was promoted. Applicant provided sufficient evidence to show reasonable resolution of the SOR debts and overall financial responsibility.

Accordingly, I conclude Applicant has carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant or continue eligibility for access to classified information.

### **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.p: For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national security interest of the United States to grant or continue Applicant's eligibility for access to classified information. Applicant's security clearance is granted.

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Gregg A. Cervi  
Administrative Judge