



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



In the matter of: )  
)  
) ISCR Case No. 19-03648  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric C. Price, Esq., Department Counsel  
For Applicant: *Pro se*

08/05/2021

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**Decision on Remand**

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MURPHY, Braden M. Administrative Judge:

Applicant did not provide sufficient evidence to mitigate financial considerations security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case and Procedural History**

**Prior Decision and Appeal**

Applicant submitted a security clearance application (SCA) on January 19, 2019. On January 23, 2020, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD took the action under Executive Order 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 answered the SOR on or about March 6, 2020, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record without a hearing. (Applicant's Answer contains two pages concerning "choice of forum." On one of them, he elected a decision based on the administrative record, and signed his name, though there is no date. The other "choice of forum" page is signed and dated March 6, 2020 but neither forum is selected). Applicant's SOR Answer also contains documents relating to his student loans. On June 30, 2020, the Government submitted a File of Relevant Material (FORM), consisting of six exhibits (Items 1 - 6). On July 9, 2020, Applicant received a copy of the FORM, which instructed him to respond within 30 days of receipt.

The case was forwarded to the DOHA Hearing Office when no timely response from Applicant was received. On September 15, 2020, the case was assigned to a DOHA administrative judge for a decision. On February 4, 2021, after considering the record, the initial administrative judge issued a decision in which he denied Applicant's request for a clearance. Applicant appealed. Language in the Appeal Board's decision indicates that one of the matters at issue was whether Applicant had been informed of his right to respond to the FORM. (Appeal Board (AB) Decision at 1-2)

On May 10, 2021, the DOHA Appeal Board remanded the case "to reopen the record and permit Applicant to have a new timeframe in which to submit [a] response to the FORM." (AB Decision at 2) The Appeal Board also directed that the case be remanded to a different judge "who shall administer the proceedings in accordance with the Directive and issue a new decision in accordance with Directive ¶ E3.1.35." (AB Decision at 2)

### **Re-Opening of the Record**

On May 11, 2021, the case was assigned to me. A May 19, 2021 conference call was held among the parties, and memorialized in an e-mail. (Hearing Exhibit (HE I) As detailed in HE I, during the conference call Applicant confirmed several things about the state of the record at that point. He confirmed:

- Receiving the Statement of Reasons, answering it, and waiving his right to a hearing;
- Receiving the Government's File of Relevant Material (FORM) and the package of materials and confirmed that he still had it;
- That he did not submit a response to the FORM, either before or after September 24, 2020 (a date addressed in the Appeal Board Decision), nor had he been contacted by anyone at DOHA about whether he wished to do so; and
- That he wished to submit documents in response to the FORM.

I therefore reopened the record until June 18, 2021, for Applicant "to have the opportunity to submit documents in response to the Government's FORM (such as documents relating to specific SOR debts, relating to his finances generally, or any other matters [sic] he wishes to provide," as well as a narrative response in writing. . . ." (HE I)

I also requested that Applicant review the Government's documents and note any objections to any of them, "such as Item 4, the summary of his personal subject interview (specifically noted in the FORM), as well as the other Government documents (his clearance application and several credit reports)." I noted that Applicant should submit his documents "by e-mail, in PDF form, to both Mr. Price and me, OR by Fax, by June 18" and noted that Government Counsel requested a brief period to respond. (HE I) Applicant confirmed receipt of that email on May 25, 2021. (HE I)

The document submission deadline of June 18, 2021 came and went with no indication that Applicant had submitted any documents. (During all of June 2021, I was out of the office on emergency leave due to an unexpected family matter, but I was monitoring e-mails during this period).

On July 8, 2021, I e-mailed the parties. (HE II) I noted that I had not received any documents from Applicant. I also noted that I had received one e-mail from a third-party law firm but that "it did not appear to relate" to Applicant. That third-party e-mail is marked as HE III for the record, but it is not an exhibit, as I did not open the "encrypted message" in the attached link, since I did not recognize the source. I gave Applicant until July 12, 2021, to confirm whether he (or anyone on his behalf) had submitted any new documents to DOHA since May 19, 2021. I also closed the record as of July 8, 2021, "absent an indication that [Applicant] submitted documents that I am not aware of." (HE II)

Applicant responded on July 12, 2021. His response, which I have marked as Applicant's Exhibit (AE) 1, is quoted in full:

Hello. I have no additional documents to submit at this time. The only form that I've tried to submit were to be via fax. The only form is to be submitted is the form request by the administrative judge was the FORM document that contains all material required. I was unsuccessful in reaching everyone on the form; however, did get in contact with 2 in material presented but no documents was received to details any and additional information for FORM.

Given Applicant's response, I requested that he respond by July 14, 2021, and clarify: 1) whether, after May 19, 2021, he had submitted documents to DOHA by fax; and 2) whether the e-mail from the third-party law firm related to him. (HE IV) Applicant did not respond by the stated deadline of July 14, 2021.

### **Evidentiary Rulings**

Item 1 is the SOR, dated January 23, 2020. Item 2 includes Applicant's SOR Answer, dated March 6, 2020, and two attached documents (Items 2A and 2B) relating to his student loans, both dated March 2020. Item 3 is Applicant's SCA, dated January 19, 2019. Item 4 is the summary of Applicant's April 2, 2019 background interview, as well as 12 pages of attached documents, all related to financial matters. Item 5 and Item

6 are credit reports, dated February 2, 2019 and October 10, 2019, respectively. AE 1 is the July 12, 2021 e-mail from Applicant (quoted above).

Hearing Exhibits I through IV are in the record, but are not substantive exhibits. Items 1 and 2 are the pleadings in the case. The attachments to Item 2 are admitted as Items 2A and 2B. Applicant having noted no objection to Items 3 through 6, they are all admitted. AE 1 is also admitted.

### **Findings of Fact**

In his SOR Answer, Applicant admitted SOR ¶¶ 1.a through 1.e, and denied SOR ¶ 1.f, all with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 40 years old. His 2019 SCA reflects that he has never married and has no children. (Item 3) He graduated from high school in May 2004 and earned a bachelor's degree in May 2009. (Item 4 at 2)

Applicant worked at a campus bookstore from August 2006 to January 2017, when the store went out of business. (Item 3 at 12). While at the bookstore full time, he also worked nights at a retail department store from November 2012 to February 2015, when he was terminated due to an attendance issue. (Item 3 at 13-14; Item 4 at 2-3) After a brief period of unemployment in early 2017, he worked as an assistant store manager at a food store starting in March 2017. (Item 3 at 11)

Applicant's more recent employment history is unclear. His SCA does not reflect his current employer, though his file reflects that the SOR was sent to him through the facility security office of a defense contractor, presumably his sponsor for a clearance. His April 2019 interview summary contains no information about his then-current employment. (Item 4) Applicant provided no information in his SOR Answer, or since then, about his recent or current employment or sources of income. (Item 2; AE 1) He has not previously held a security clearance. (Item 3 at 27)

The SOR alleges that Applicant has incurred six delinquent debts. They are established by his admissions or by the credit reports in the record, both from 2019. (Items 2, 5, 6).

SOR ¶ 1.a is a student-loan debt with the U.S. Department of Education (USDOE) that has been placed for collection in the approximate amount of \$37,829. (Items 5, 6) At the time of his background interview, Applicant owed \$63,528 on the debt. (Item 4 at "12 of 12") Item 2A, attached to Applicant's SOR Answer, reflects that as of March 2, 2020, Applicant owed about \$67,356 on the debt. He authorized a payment of \$53 to be made on March 12, 2020. (Item 2A) Applicant noted in his SOR Answer that he was in a 10-month recovery plan to rehabilitate the loan to "good-standing" status. (Item 2) The record contains no documentation that the \$53 payment, or any others, were made since March 2020, or that it was to be part of an agreed-upon, regular payment plan.

SOR ¶ 1.b is a federal student-loan debt with a private student-loan provider, that, as of October 2019, was \$343 past due, with a total balance owed of \$16,807. (Items 5, 6) Item 2B is a March 1, 2020 statement for this debt. It reflects a principal balance of \$15,409 and a total balance due of \$17,169. The account was in forbearance status from January to March 2020. Applicant was on a graduated monthly payment plan of \$92 a month for 24 months, with monthly payments to increase up from \$108 to \$276 per month, over a timeframe from March 2020 until April 2034. (Item 2B) Applicant claimed in his SOR Answer that he was in forbearance status because he could not afford to make payments on the loan. (Item 2) The record contains no documentation that the first \$92, or any other subsequent monthly payments were actually made on the account since March 2020.

With respect to Applicant's federal student loans, I note that due to the COVID-19 pandemic, the USDOE has been providing temporary relief on federal student loans, including suspension of loan payments and collections on defaulted loans. On January 20, 2021, President Biden extended that COVID-19 emergency relief to at least September 30, 2021.<sup>1</sup> These webpages are marked as Administrative Notice (AN) I.

SOR ¶ 1.c (\$458) is a charged-off credit-card debt relating to a department store credit card. (Item 5 at 13; Item 6) The department store is the same store where Applicant worked the night shift until he was terminated. Applicant notes in his SOR Answer that he had an arrangement to make \$25 monthly payments over six months to settle the debt, and that he made a \$25 payment in late February 2020. Neither the initial \$25 payment nor any other payments are documented in the record.

SOR ¶ 1.d (\$1,073) is a cell-phone bill that has been placed for collection. (Item 5 at 12) Applicant admitted the debt in his SOR Answer, but claimed that he could not afford to pay it.

SOR ¶ 1.e (\$610) is a debt that has been placed for collection by a bank. (Item 5 at 13) Applicant admitted the debt in his Answer, but claimed that he could not afford to pay it. (Item 2)

SOR ¶ 1.f (\$3,214) is a debt placed for collection by an auto dealer. (Item 5 at 13) Applicant asserted in his SOR Answer that the debt had been paid off and that he had provided proof earlier. (Item 2) Among the documents attached to Applicant's background interview summary is a document from the auto-dealer creditor reflecting a zero balance, with no money past due; the last payment was made on February 3, 2015, and the account is closed. SOR ¶ 1.f is resolved.

Despite having been given the opportunity to do so, Applicant did not submit any documentation about the recent or current status of any of his unresolved SOR debts, or about his income, expenses, assets, or general finances. In AE 1, he said that he had no

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<sup>1</sup> (See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments/>; See <https://studentaid.gov/announcements-events/coronavirus> (as of August 2, 2021). (AN I)

additional documents to submit, though he evidently attempted to contact some of his creditors for such documents, without success. (AE 1)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines 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(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 ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The Guideline F allegations in the SOR concern two large delinquent federal student loans and some other past-due accounts. They are all established by Applicant's admissions and by credit reports in the record, both from 2019. AG ¶¶ 19(a) and 19(c) apply.

Security concerns having been raised, the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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 ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005)). Applicant has the burden of presenting evidence of explanation, extenuation, or mitigation to overcome the financial considerations security concerns.

The following 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 person has received or is receiving 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 disputed the legitimacy of the debt alleged in SOR ¶ 1.f, asserting that he had already paid it, and that he had provided supporting documentation previously. This proved correct, as documentation he submitted at the time of his background interview established that the debt to the auto dealer had been paid in full in 2015. AG ¶ 20(e) applies to mitigate SOR ¶ 1.f.

Applicant's federal student loans, alleged in SOR ¶¶ 1.a and 1.b, are unresolved, and indeed are greater as of March 2020 (a combined \$84,525) than they were in October 2019 (a combined \$54,636, as alleged in the SOR). Payments of Applicant's federal student loans are likely suspended due to President Biden's Executive Order. However, this does not excuse or eliminate the fact that they have been delinquent for years. Applicant had a rehabilitation plan in place as of March 2020, but there is no documentation in the record that he made any payments on either debt alleged in SOR ¶¶ 1.a or 1.b in the time since. There is also nothing in the record to establish their current status. The debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e, though much smaller than the student loans, are also unresolved.

Applicant also provided little to no information about his recent and current ability to repay his debts. His employment history after January 2019 is unclear, and he provided no information about his income, expenses, assets, or general finances, information which might be used to evaluate his overall financial stability.

Applicant did not provide sufficient information to establish that his financial issues are unlikely to recur and no longer cast doubt on his current reliability, trustworthiness, or good judgment. His debts are also ongoing and unresolved. AG ¶ 20(a) does not apply. There is no indication that Applicant has participated in financial counseling or that his debts are being resolved or are under control. AG ¶ 20(c) does not apply.



Applicant did not provide sufficient information to establish that AG ¶ 20(b) should apply. He was terminated from his night job at the department store in 2015, and was briefly unemployed in early 2017 after the bookstore closed. Those circumstances may have been beyond his control but they are also now several years ago, and Applicant did not establish that his finances continue to be negatively affected as a result. Even if that were the case, he did not establish that he undertook reasonable action to address his debts under the circumstances. AG ¶ 20(b) does not apply.

Applicant referenced agreements made with some of his creditors (the federal student-loan debts alleged in SOR ¶¶ 1.a and 1.b and the debt alleged in SOR ¶ 1.c) but he did not provide any documentation that he had made any payments in compliance with those agreements. He claimed that he was not financially able to make payments to resolve the debts alleged in SOR ¶¶ 1.d and 1.e. His limited and dated actions do not establish that he has a reasonable plan to resolve his debts or that he has taken any meaningful steps towards doing so. AG ¶ 20(d) does not apply.

### **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 the 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 clearance must be an overall common sense 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. My comments under Guideline F are incorporated in my whole-person analysis. Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has a long history of financial instability. He did not meet his burden to establish that his debts are under control, are being resolved, or that he is addressing them in a responsible way. Applicant's debts will remain a security concern until he shows a documented track record of good-faith efforts to resolve them. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability

for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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, Financial Considerations:                    AGAINST APPLICANT

Subparagraphs 1.a -1.e:    Against Applicant

Subparagraph 1.f:    For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Braden M. Murphy  
Administrative Judge