



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



In the matter of: )  
)  
) ISCR Case No. 20-02989  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

August 16, 2021

**Decision**

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns regarding financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is granted.

**Statement of the Case**

On April 10, 2019, Applicant filed a security clearance application (SCA). On December 7, 2020, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the DoD on June 8, 2017.

On January 25, 2021, Applicant responded to the SOR (Answer). He admitted each of the allegations, noting for each of them, "I will [be] taking care of [the debt]." He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On April 13, 2021, the case was assigned to me. On the same day, DOHA issued a Notice of Hearing scheduling the hearing for June 9, 2021.

I convened the hearing as scheduled. Department Counsel presented five proposed exhibits, which he marked for identification purposes as Government Exhibits (GE) 1 through 5. All of the Government's exhibits were admitted without objection. Applicant offered no exhibits at the hearing. (Hearing Transcript at 8-17.)

I kept the record open until July 7, 2021, to give Applicant the opportunity to supplement the record. On June 28, 2021, Applicant sent via email 11 documents, which are marked as Applicant Exhibit (AE) A through K and admitted without objection. He submitted no additional exhibits before the record closed. DOHA received the hearing transcript (Tr.) on June 16, 2021.

### **Findings of Fact**

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 44 years old and works for a defense contractor as a security guard. He was born in a foreign country in the Caribbean and entered the United States at age 12 with his family. In 2009 he naturalized as a U.S. citizen. He was granted a security clearance the same year. He earned a Bachelor's degree in 2012. He began working part time "on call" for his current employer in 2019 at a higher hourly pay rate than he has earned in the past. With a security clearance, he would be able to work full time and earn much more with overtime, which is readily available at his employer. He also works less than full time as an armed security guard for another employer. He has been continuously employed in the security field since 2008. Some of his jobs, however, have been part time or paid poorly. He has never married. He has one child, age 14. (Tr. at 20-22, 25-27; GE 2 at 4.)

In his May 28, 2019 background interview, Applicant was confronted with a large number of debts that were delinquent or in collection. He acknowledged the debts and told the investigator that it was his intention to pay them. (GE 2 at 4-11.)

### **SOR Allegations**

Paragraph 1, Guideline F - The SOR sets forth 18 allegations regarding Applicant's delinquent debts, ten of which are student loans. The total amount of Applicant's delinquent student loans is about \$53,000. The total amount of the remaining eight debts set forth in the SOR is about \$23,000.

The details regarding each SOR allegation are as follows:

**a. Collection account \$969.** This debt is for rental charges for a storage unit. Applicant moved to a rental consisting of a single room and had to put his property into storage. He had other debts and stopped making payments to this creditor in 2019. He entered into a \$100 per month payment arrangement with the collection agency handling this debt. He made his first payment in May 2021. After the hearing, he provided evidence of a June 2021 payment in the amount of \$50. This debt will be fully repaid in about eight months. **This debt is being resolved.** (Tr. at 41-45; GE 5 at 1; AE J.)

**b. Collection account - \$386.** This credit-card debt is owed to a bank. Applicant testified that he has paid the debt. He provided documentary evidence of his payment in full. **This debt is resolved.** (Tr. at 45-48; GE 3 at 14; GE 4 at 2; AE F.)

**c. Charged-off account - \$593.** Applicant opened this credit-card account in January 2018 and defaulted in mid-2019. He is presently making payments on the account. He provided a document evidencing \$50 payments every month since February 2021, totaling \$293, about one-half of the debt. The Government's March 2021 credit report in the record (GE 5) reflects that Applicant had reduced the amount of the debt at that time by \$100. He also provided a statement from the creditor reflecting a remaining balance of about \$300. This debt will be fully repaid in about six months after the close of the record. **This debt is being resolved.** (Tr. at 48-49; GE 3 at 7; GE 4 at 2; GE 5 at 3; AE E.)

**d. Charged-off account - \$213.** Applicant opened this jewelry store charge account in 2017 and defaulted on the account in 2018. After the hearing, he entered into a payment plan to repay this debt with six monthly installments of \$35, totaling \$213. He also provided evidence that he made his first payment on June 16, 2021. This debt will be fully repaid in about five months after the close of the record. **This debt is being resolved.** (Tr. at 49-50; GE 3 at 7 15; GE 4 at 3; GE 5 at 3; AE G.)

**e. Charged-off account - \$3,315.** Applicant opened this auto-loan account in 2017. He defaulted on the loan in 2020. Applicant testified that he is now "focused" on repaying this debt because, aside from his student loans, it is one of his largest debts. After the hearing, he made his first payment of \$276.91, plus a service fee. This amount represents the first of 12 monthly payments. **This debt is being resolved.** (Tr. at 50; GE 3 at 9; GE 4 at 2; GE 5 at 4; AE C.)

**f. Federal student loan collection accounts f (\$11,559); h (\$8,766); j (\$3,268); k (\$3,157); l (\$3,057); m (\$2,924); n (\$2,457); and o (\$2,124).** About a year after he graduated with his Bachelor's degree, Applicant began repaying his student loans. He was making automatic monthly payments of \$150 out of his bank account. He changed accounts and failed to notify the lender, so the payments stopped. The eight loans listed in the SOR allegations noted above have been assigned to the U.S. Department of Education (DOE) for collection. In about 2017, the DOE or its agent contacted Applicant and requested that he resume making payments. He can afford to pay these loans now

that he is working two part-time jobs. He has entered into a payment arrangement with National Recoveries, Inc., acting on behalf of DOE, to start deducting payments again in October 2021 under a rehabilitation plan. I note that due to the COVID-19 pandemic, the DOE has been providing temporary relief of student loans, including the suspension of loan payments and collections of defaulted loans. On January 20, 2021, President Biden extended that COVID-19 emergency relief to September 30, 2021, and on August 6, 2021, the pause was extended to January 31, 2022. As a result, Applicant is not obligated to make any payments until the new deadline. If he receives a security clearance and becomes eligible to work full time with his sponsor, he will have more funds available to pay his student loans debts at that time. These debts are not yet resolved, but no payments are due at this time and he has a plan to begin addressing these debts when required to do so. **I conclude this debt in favor of Applicant.** (Tr. at 22, 32-41, 51; GE 3 at 3-11; GE 4 at 1-2; GE 5 at 4-6; AE B.) (See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments/>; <https://studentaid.gov/announcements-events/coronavirus>; <https://www.ed.gov/news/press-releases/biden-administration-extends-student-loan-pause-until-january-31-2022> . (Administrative Notice I)

**g. Federal student loans collection accounts g (\$9,694); and i (\$6,242).** Two of Applicant's ten student loan debts listed in the SOR have been assigned for collection to Educational Credit Management Corp. (ECMC). Two days after the hearing, Applicant entered into a Loan Rehabilitation Agreement with ECMC to rehabilitate the two loans DOE has assigned to it. The agreement requires Applicant to pay \$273 per month for nine months to "rehabilitate" the loans. After that he will enter into a standard repayment plan. Also, ECMC will request at that time that the credit reporting agencies note that Applicant's two student loans are not in default. As noted above, the new deadline for the expiration of the student loan payment moratorium is now January 31, 2022. These debts are not yet resolved, but no payments are due at this time and he has a plan to begin addressing these debts when required to do so. **I conclude this debt in favor of Applicant.** (AE A.)

**p. Charged-off account - \$16,296.** Applicant opened this auto loan account in 2012 and defaulted on the loan in 2017. He could no longer pay the loan, and he returned the vehicle. He was unaware that he would have a large deficiency on the debt after the repossession. He testified that he will resolve this debt through a payment plan once he is able to work full-time with his clearance sponsor with a security clearance. After the hearing, he provided evidence of a payment plan to pay \$413.15 per month and an initial payment of \$150. **This debt is being resolved.** (Tr. at 51-52; GE 3 at 3; AE D.)

**q. Collection account - \$824.** Applicant believes this may have been a debt for auto insurance. He testified that he will take care of that delinquent bill. After the hearing, he made his initial payment of \$50. He will repay this debt in full in about 16 months. **This debt is being resolved.** (Tr. at 52-53; GE 3 at 14; AE I.)

**r. Collection account - \$354.** Applicant admitted that he once had cell phone service with the original creditor on this account. He testified that he will look into why

they are claiming he is indebted to the service provider. After the hearing, Applicant made a payment of \$176.67 and provided documentation that the account now has a zero balance. **This debt is resolved.** (Tr. at 53; GE 3 at 15; AE K.)

Applicant pays \$40 per week in child support. The amount is deducted from his paycheck every week. He has no arrearage for unpaid child support. In the past, he has been focused on paying his rent, child support, and utilities. He testified that he does not earn a lot of money, and he pays the bills he can to meet his basic commitments. Now that he has some additional income from a second part-time job, he is focused on repaying his largest debts, which are his student loans and his unpaid auto loans. With a security clearance, he can work full time with his sponsor and be eligible to work overtime. He is presently working "on call" with that employer. He testified that:

"it is just tough, you know. I worry how I will live. I'm on my own. It's just - - to be honest with you - - I'm very responsible. It is just certain things I need to take care of here. I've got to do this. I've got to do that. It's just so much.

He works about 32 hours per week at his primary job as an armed security guard and is working one or two days a week "on call" at his clearance sponsor. He earns less than \$3,000 per month and lives in a state known for its high cost of living. He is careful with his spending, but he does not have a written budget. He has not received any credit counseling. In the past, he has had financial problems when his hours were reduced or his pay rate was insufficient, not because of any extended unemployment. (Tr. at 55-59.)

### **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.

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, 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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.

Adverse clearance determinations 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. 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 (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 ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 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.

## **Analysis**

### **Guideline F, Financial Considerations**

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

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The Government's credit reports listing 18 delinquent debts establish the following conditions under AG ¶ 19 that could be disqualifying:

(a): inability to satisfy debts; and

(c): a history of not meeting financial obligations.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Four of these mitigating conditions have possible applicability to the facts of this case:

(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 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; and

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

AG ¶ 20(a) is not established. Applicant's debts are numerous and in some instances, they are recent. His debts arose due to his underemployment and near poverty-level income while living in a state with a high cost of living, not due to any unusual occurrence in his life.

AG ¶ 20(b) is established. Applicant has not been successful in realizing his full income potential following his graduation with a Bachelor's degree in 2012. He has worked in a field that does not pay him enough money to support himself and his child comfortably. Had he not been underemployed as a college graduate, he could have continued paying his student loans. Notwithstanding his chronic problem of working in a low-income field, his total delinquent consumer debt is relatively small, less than \$7,000,

excluding an auto loan that ended badly with a repossession and a \$16,000 deficiency. This evidences that he has acted responsibly in controlling his spending and paying most of his bills. Applicant is highly motivated to resolve his debts. At every opportunity since his receipt of the SOR, Applicant has stated his commitment to repay all of his debts. He is making progress on his debts in a responsible manner consistent with his very limited resources. Two of his consumer debts have been repaid and he has put in place payment plans to repay the six remaining consumer debts over the next five to 40 months. He has also arranged rehabilitation plans for his student loans and will begin paying his loans when required to do so. Applicant has acted responsibly under the circumstances and consistent with his limited financial resources.

AG ¶ 20(c) is partially established. Applicant has not received any financial counseling. All of the progress he has made in repaying debts and setting up payment plans and rehabilitation agreements is the result of his own efforts to resolve his delinquent debts. Although it is too early to conclude that all of Applicant's financial problems are being resolved or are under control, he has shown impressive initiative to resolve his debts.

AG ¶ 20(d) is partially established. Applicant is making progress towards regaining financial responsibility in a deliberate and measured way. He has repaid two debts (1.b and 1.r). He has also made payment arrangements to repay his six other consumer debts (1.a, 1.c, 1.d, 1.e, 1.p, and 1.q) with time frames of five months (1.d), six months (1.c), eight months (1.a), 12 months (1.e), 16 months (1.q), and 40 months (1.p). As each debt is paid off, he has more funds available to pay his student loans and improve the quality of his rather modest lifestyle. Applicant initiated the payment plans on two of his debts prior to the hearing, specifically 1.a in May 2021 and 1.c in February 2021. He also initiated his plan to rehabilitate eight of his student loans prior to the hearing, though the payments are not scheduled to start until October 2021, when the payment moratorium was previously scheduled to expire. His other repayment plans arose after the hearing. This timing undercuts the good-faith nature of his mitigation efforts under this mitigating condition. He has long recognized that he needed more income to be in a position to begin repaying his debts and to avoid some of more recent delinquencies. Now that he is working two jobs, he has more financial resources available to begin to resolve his debts.

The adjudicative guidelines do not require that an applicant be free of unpaid debts. The Appeal Board has established the following basic guidance for adjudications in cases such as this:

. . . an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which the applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts



simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time.

ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted). Since the hearing, Applicant has taken aggressive steps to address all of his unpaid consumer debts starting immediately, not just one at a time. In several instances, his track record of adherence to his repayment agreements has been short, but in the case of two of his debts, he began making payments prior to the hearing, evidencing his commitment and desire to repay his debts in a timely manner. Also, he contacted the DOE's collection agent and made a plan to begin to rehabilitate most of his student loans when the repayment moratorium was scheduled to terminate in October 2021. After the hearing, he followed up with a second DOE collection agent to enter into a rehabilitation agreement for his two other student loans.

When considering the entirety of Applicant's financial situation, I view Applicant's corrective action to be responsible and reasonable. Given his limited financial resources, he has initiated a pragmatic approach to the repayment of his SOR debts and is making a sincere, proactive effort to resolve those debts. He has made considerable sacrifices to get to the point where he is today. Overall, I conclude that Applicant has mitigated security concerns raised by financial considerations.

### **Whole-Person Analysis**

Under AG ¶ 2(c), 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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's determination to obtain a college degree and his success in achieving that goal, even though it required him to take on a large amount of student-loan debt to pay for his education. For whatever reason, his dream that a college degree would translate into improved income has eluded him to date. He is still working in the same type of jobs that he had before he began his college education. As a result, he has not been able to repay

his student loans pursuant to their terms. But he has not given up, and he is diligently working to resolve these student loan debts and his other delinquent debts. His determination in spite of years of adversity is impressive. His commitment to improve his life and his financial security is sincere. This makes his stated intent to resolve all of his debts credible. As he wrote in his Answer, "I will be taking care of these debts." He has not tried to evade or dispute his debts. He impressed me at the hearing as a person who will honor his word as a matter of pride and sense of obligation.

Overall, the record evidence as described above leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his financial considerations.

### **Formal Findings**

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a through 1.r:

For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

John Bayard Glendon  
Administrative Judge