



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



In the matter of:

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ISCR Case No. 21-00333

Applicant for Security Clearance

**Appearances**

For Government: Kelly M. Folks, Esq., Department Counsel

For Applicant: *Pro se*

04/08/2022

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**Decision**

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HARVEY, Mark, Administrative Judge:

Applicant mitigated Guideline F (financial considerations) security concerns. All of his SOR debts are either paid or in established payment plans. He made sufficient progress resolving his delinquent debts. Eligibility for access to classified information is granted.

**Statement of the Case**

On July 9, 2020, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On March 24, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; 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. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guideline F. On April 10, 2021, Applicant provided a response to the SOR, and on April 12, 2021, he requested a hearing. (HE 3)

On July 7, 2021, Department Counsel was ready to proceed, and on January 5, 2022, the case was assigned to me. On January 10, 2022, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 15, 2022. On February 9, 2022, the hearing was delayed until February 25, 2022. DOHA issued a formal notice of hearing on February 11, 2022. The hearing was held as rescheduled on February 25, 2022, using Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered four exhibits; Applicant offered one exhibit; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 15-16; GE 1-4; Applicant Exhibit (AE) A) On March 8, 2022, DOHA received a transcript of the hearing. Applicant provided five post-hearing exhibits, which were admitted without objection. (AE B-AE G) The record closed on March 17, 2022. (Tr. 62, 67)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

In Applicant's SOR response, he admitted he owed the debts listed in SOR ¶¶ 1.a through 1.i. (HE 3) He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 32-year-old engineering technician who has worked for a defense contractor for almost two years. (Tr. 6, 8, 22; GE 1) In 2007, he graduated from high school, and he completed 66 college credits; however, he did not receive a degree. (Tr. 7) He has not served in the military. (Tr. 7) He has never married, and he does not have any children. (Tr. 7) He shares some home-related expenses with his cohabitant. (Tr. 20, 23) He has never held a security clearance. (Tr. 36)

### **Financial Considerations**

Applicant attributed his financial issues to underemployment and unemployment. He was unemployed for three months in 2017 and briefly in May 2020. (Tr. 34-35) He was unable to make payments on several of his debts until 2019 because of underemployment. (Tr. 27) From August of 2011, through April 2018, he was employed at a coffee shop, and he was earning \$13 an hour. (Tr. 27, 34)

The SOR alleges nine delinquent student loan debts totaling \$33,758, which were placed for collection as follows: ¶ 1.a (\$7,511); ¶ 1.b (\$5,145); ¶ 1.c (\$4,048); ¶ 1.d (\$3,479); ¶ 1.e (\$3,414); ¶ 1.f (\$3,276); ¶ 1.g (\$2,827); ¶ 1.h (\$2,691); and ¶ 1.j (\$1,367). Applicant's student loans were in deferment until 2017 because he was continuing or intended to continue his college education. (Tr. 26) In December 2019, he began making

\$5 monthly payments as part of a 12-month loan-rehabilitation program. (Tr. 27-29) In March 2020, as a result of the COVID-19 pandemic, the Department of Education (DE) placed federal student loans in forbearance. On December 22, 2021, the DE extended the student loan payment pause through May 1, 2022. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collections on defaulted loans. See Federal Student Aid website, <https://studentaid.gov/announcements-events/covid-19>. On February 25, 2022, the creditor wrote "Because you have rehabilitated these loans, we have notified the national credit bureaus to delete the record of default from your credit record." (AE C) In June 2022, Applicant is scheduled to begin making \$63 monthly payments in accordance with his new plan to address his student loan debt. (Tr. 30, 38-39)

SOR ¶ 1.i alleges a delinquent telecommunications debt placed for collection for \$1,880. Applicant signed contracts for his own phone and a former girlfriend's telephone. (Tr. 39-41) She did not make the payments for her phone contract. (Tr. 39) Applicant accepted responsibility for her debt. On February 25, 2022, the creditor offered to settle the \$1,630 debt for \$314. (AE D) On March 3, 2022, Applicant made a \$314 payment, and this debt is resolved. (*Id.*)

SOR ¶ 1.k alleges a delinquent bank debt placed for collection for \$177. On January 28, 2021, Applicant paid \$128 and settled the debt. (Tr. 45)

SOR ¶ 1.l alleges a charged-off credit union debt for \$15,877. In 2018, Applicant purchased a vehicle and made a \$500 down payment. (Tr. 47) He financed \$31,500. (Tr. 47) In 2019, he had the vehicle voluntarily repossessed because he could not afford the car payments and vehicle-related expenses. (Tr. 49) Correspondence from the creditor was sent to his parent's residence and then lost. (Tr. 53-54) The debt was sent to collections when the creditor did not hear from Applicant. (Tr. 53-54) In May 2019, Applicant entered into a payment plan with the creditor, and he made \$150 to \$200 monthly payments every month from June 2019 to present. (Tr. 46-50; AE B) On February 26, 2022, the creditor wrote that all payments were made on the payment plan and the debt is current. (AE B)

Applicant paid off one non-SOR telecommunications debt. (AE E) His most recent credit report of record does not contain any non-SOR delinquent debts. (GE 3) He generated a personal financial statement. (AE F) His current monthly salary is \$2,850. (*Id.*) His net monthly remainder is \$465. (*Id.*) Applicant said:

I honestly have enjoyed working for the company that I work for. Ever since I got this job, it's changed my life to where I'm able to pay everything off now. Before I wasn't able to. But working with this company I've been able to pay everything off. With my security clearance that would help me tremendously to be able to go places that I can't go, to make extra money to pay off even more of my debt. . . . I've just been trying to pay everything off and get my life together. So with this job it's been helping tremendously. (Tr. 63-64)

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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.

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 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. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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 Directive presumes there is a nexus or rational connection between proven conduct under any of the Guidelines and an applicant’s security eligibility. Direct or objective evidence of nexus is not required.” ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (citing ISCR Case No. 15-08385 at 4 (App. Bd. May 23, 2018)).

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**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. 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 or otherwise questionable acts to generate funds.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; and “(c) a history of not meeting financial obligations.” The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The relevant financial considerations mitigating conditions under AG ¶ 20 in this case are as follows:

- (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;
- (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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant was underemployed and had relatively brief periods of unemployment. His student loans went to collections. His vehicle was repossessed. He had two additional delinquent debts. He acted reasonably under the circumstances because once he received better-paying employment, he paid, brought to current status, or established payment plans for all of his SOR debts.

Two Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b) when an Applicant lacks the income to address debts. In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the Applicant had \$41,871 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That Applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The Applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his child support payments to her. The Appeal Board determined that AG ¶ 20(a) was “clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment)” even though that Applicant’s debts were unresolved at the time the Administrative Judge’s decision was issued. *Id.* at 3. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4. It is noteworthy that Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

Similarly, in ISCR Case No. 08-06567 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an Applicant was sporadically unemployed and lacked the ability to pay his creditors. The Appeal Board noted “it will be a long time at best before he has paid” all of his creditors. *Id.* at 3. That Applicant was living on unemployment compensation at the time of his hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan.

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) (citing ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008)). The Applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision in that case because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

The timing of the resolution of Applicant’s debts is a pertinent consideration. The Appeal Board has observed, “Applicants who begin to resolve their debts only after having been placed on notice that their clearances or trustworthiness designations are in jeopardy may be disinclined to follow rules and regulations when their personal interests

are not at stake.” ADP Case No. 17-00263 at 3 (App. Bd. Dec. 19, 2018) (citing ISCR Case No. 16-03122 at 3-4 (App. Bd. Aug. 17, 2018)). Applicant established payment plans for 10 of 12 SOR debts before the SOR was issued. He paid two SOR debts after the SOR was issued.

The Appeal Board has explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts under AG ¶ 20(d):

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. Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good faith” mitigating condition].

ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (citations, footnote, and last quotation marks omitted). Applicant was sincere and candid about his endeavors to bring all of his debts to current or paid status and his plans to continue those efforts in the future. There are clear indications that Applicant’s financial problems are being resolved or are under control. He generated a budget or personal financial statement. He has a sufficient monthly remainder to achieve his financial goals.

Applicant made a good-faith effort to resolve his delinquent debts, and I am confident he will continue to resolve his SOR debts. His finances do not cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are mitigated.

### **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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 32-year-old engineering technician who has worked for a defense contractor for two years. In 2007, he graduated from high school, and he completed 66 college credits. He has never held a security clearance.

Applicant acted responsibly under the circumstances, when he resolved or established payment plans on all of his debts. He understands that he needs to pay his debts, and the conduct required to retain his security clearance. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, 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 that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) 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 payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a “meaningful track record” of debt re-payment. With the increased income from his current employment, I am confident he will continue to maintain his financial responsibility. Security officials have the ability to monitor or re-evaluate his financial progress, and revoke his security clearance if he shows future financial irresponsibility.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant mitigated 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, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.l: 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 or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge