



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 21-02693 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
 For Applicant: *Pro se*  
 06/07/2022

**Decision**

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns raised by his delinquent private student loans. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on April 21, 2021. (Item 3) On December 29, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) Applicant provided an undated answer to the SOR, and requested a decision based upon the administrative record (Answer). (Item 2)

A copy of the file of relevant material (FORM), dated February 16, 2022, was provided to Applicant by letter dated February 17, 2022. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He timely submitted a response and objected to Item 6, his unauthenticated August 2021 interview with a Government investigator. On May 13, 2022, the case was assigned to me. I marked Applicant's response to the FORM as AE A, and sustained his objection to Item 6. I will not consider it, as it was not authenticated, but it will remain part of the record.

## Findings of Fact

Applicant is 33 years old, unmarried, and has a two-year-old daughter. He received a bachelor's degree in May 2014, his first master's degree in May 2019, and his second master's degree in April 2021. Since January 2007, he has worked as a self-employed entrepreneur (no further information provided). He has been employed by a state government since March 2021, as a research scientist. This is his first security clearance application. (Item 3)

The SOR alleged that Applicant has four delinquent private student loans, totaling \$165,337. In his response to the SOR, he denied all allegations and stated the loans were charged off and the debts appear with a \$0 balance on his credit report. The debts alleged in the SOR were confirmed by Applicant's credit bureau reports (CBR) dated December 2021 and June 2021. (Item 2; Item 4 at 11-12; Item 5 at 2-3)

Applicant made the four delinquent student loans debts alleged in the SOR between June 2010 and October 2012, while was he an undergraduate student. The last activity for all four debts occurred in January 2019, and they were charged off in approximately May 2019 by Applicant's student loan creditor (SLC). The CBRs reflect Applicant as the "maker," or the primary person responsible for the debts. (Item 4 at 11-12; Item 5 at 2-3)

In his April 2021 SCA, Applicant disclosed that his private student loans were charged off by SLC, because it was "unwilling to collect an amout (sic) that wouldn't result in a charge off. I personally have may (sic) every attempt possible to resolve this debt. [SLC] and my cosigner have refused to make resolving the issue possible." (Item 3 at 45-46)

In Applicant's Answer to the SOR, he provided December 2021 letters from SLC indicating it was no longer attempting to collect the delinquent private student loans alleged in the SOR, and he was no longer required to make payments toward these debts. This was based upon the age of each debt. Additionally, SLC notified him that it was required by law to notify the Internal Revenue Service to report the cancellation of a \$600 or greater debt, which applied to all of these debts. It is unknown if he has reported the cancellation of these debts in his 2021 federal tax return. (Item 2)

In Applicant's Response to the FORM, he claimed that he did everything he could to satisfy these debts, including: attempting to make partial payments; to set up a payment plan; to remove a co-signer; to amend the monthly required payment; and to pay the debts. He provided no documentary proof to support these assertions. (AE A)

Applicant blames his co-signer for his inability to make payments toward the SOR allegations. According to him, SLC would not negotiate with him regarding modifying his \$2,000 monthly loan payments without the involvement of his co-signer, who was "off the grid, ...uncontactable, and unwilling to cooperate with [SLC] in any circumstance." Additionally, Applicant asserts that SLC was held accountable in 2016 for illegal and unethical practices, which directly affected him and his attempts to make partial and

modified payments toward his student loans. He provided no documentary proof to support his assertions. (AE A)

Applicant took vacations to Mexico in 2017 and Jamaica in 2018. In June 2021, he purchased an automobile with a \$52,299 loan that has a \$831 monthly payment. In July 2021, he purchased an automobile with a \$45,131 loan that has a \$1,002 monthly payment. According to his December 2021 CBR, these accounts are current. He has \$143,709 in federal student loans that are currently deferred. He was unemployed from May 2020 to December 2020 due to the COVID-19 pandemic. (Item 3; Item 4; Item 5)

## **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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(c), 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 national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The concern under Guideline F (Financial considerations) 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. 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 . . .

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 record evidence of Applicant's delinquent debts establishes the following disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in 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;

(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's period of unemployment may have negatively affected his ability to make payments toward his delinquent private student loans, which total over \$165,000; however, he failed to demonstrate that he acted responsibly to address his debts in response to his financial setbacks. He also did not provide an adequate explanation as to why he was unable to pay his private student loans. Additionally, he failed to provide documentation to support his claims that he made attempts to make payments, partial payments, modified payments, and establish payment arrangements with SLC before it charged off his delinquent student loans. There is no evidence in the record, other than his claims, that he acted responsibly. Additionally, he provided no documentation to support his claims that SLC behaved in an illegal manner.

Applicant argued that his private student loans were resolved, because SLC charged off the debts and they are no longer attempting to collect payments from him. Although his debts are no longer legally enforceable, his failure to pay his SOR creditor does not negate his past conduct or failure to take more aggressive actions to resolve his delinquent debts. As noted above, he did not provide documentary evidence of any actions to resolve his SOR debts before they were charged off by SLC.

In this case, Applicant failed to pay his private student loans, which required him to make \$2,000 monthly payments. Shortly thereafter, he incurred \$97,430 in automobile loans, which require him to make collective monthly payments of \$1,833. These accounts are current, based upon his December 2021 CBR. This behavior demonstrates that he picks and chooses which creditors toward which he is acts in a responsible and trustworthy manner. He has not demonstrated that he is a reliable, trustworthy, or exercises good judgment. Mitigation under AG ¶¶ 20(a), 20(b), 20(d), and 20(e) was not established.

### **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. 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 commonsense 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. I have incorporated my comments under Guideline F in my whole-person analysis. I conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.d:  | Against Applicant |

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge