



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 21-01636
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esquire, Department Counsel
For Applicant: *Pro se*

08/22/2022

Decision

HOGAN, Erin C., Administrative Judge:

On August 10, 2021, the Defense Counterintelligence and Security Agency (DCSA) CAF issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

On August 28, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 17, 2022. The case was transferred to me on June 14, 2022. A Notice of Hearing was issued on June 23, 2022, scheduling the hearing on July 19, 2022. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered nine exhibits which were admitted as Applicant Exhibits (AE) A - I. The transcript (Tr.) was received on July 29, 2022. The record was held open until August 5, 2022, to allow Applicant to submit additional documents. Applicant submitted five documents

which were admitted without objection as AE J – AE N. In her answer to the SOR, Applicant provided a letter from the Department of Education, dated July 12, 2021. I am marking this two-page letter as AE O. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Administrative Notice

On August 18, 2022, I sent the parties two press releases issued by the Department of Education regarding the ability of students and former students of the technical institute which Applicant attended to file borrower defense claims seeking a discharge of their student loans. I informed the parties that I intend to take administrative notice of these documents. Each party was given the opportunity to object. Neither party objected. I have taken administrative notice of the following facts from the two documents which are marked as Admin Notice Documents (Admin Not) 1 and 2:

On June 16, 2021, the U.S. Department of Education announced the approval of 18,000 borrower defense to repayment (borrower defense) claims for individuals who attended the technical institute which Applicant attended. These borrowers will receive 100 percent loan discharges, resulting in approximately \$500 million in relief. The approvals cover two categories: first, the student's likely employment prospects; and second, the student's ability to transfer credits. (Admin Not I)

On August 16, 2022, the U.S. Department of Education announced it will discharge all remaining federal student loans that borrowers received to attend the technical institute from January 1, 2005, through its closure in September 2016. The decision follows the Department's findings based on extensive internal records, testimony from the technical institute's managers and recruiters, and first-hand accounts from borrowers, and will result in 208,000 borrowers receiving \$3.9 billion in full loan discharges.

U.S. Secretary of Education, Miguel Cardona said:

It is time for student borrowers to stop shouldering the burden from [the technical institute's] years of lies and false promises. The evidence shows that for years, [the technical institute's] leaders intentionally misled students about the quality of their programs in order to profit off federal student loan programs, with no regard for the hardship this would cause. The Biden-Harris Administration will continue to stand up for borrowers who have been cheated by their colleges, while working to strengthen oversight and enforcement to protect today's students from similar deception and abuse. (Admin Not 2)

The U.S Department of Education concluded that the technical institute Applicant attended made repeated and significant misrepresentations to students related to how much they could expect to earn and the jobs they could obtain after graduation between

2005 and the institute's closure in 2016. These findings were based on evidence provided by the partners at the Consumer Financial Protection Bureau, from half the country's state offices of attorneys general, and Veteran's Education Success. (Admin Not I and 2)

Findings of Fact

Applicant is a 36-year-old employee of a Department of Defense contractor seeking a security clearance. She was born in another country and immigrated to the United States in 1998 at the age of 13. She became a US citizen in 2004. She attended a for-profit technical institute between 2005 to 2009, earning a bachelor's degree. She has never served in the U.S. military. She is single and has no children. (Tr. 10, 24, 32; Gov 1) The names of individuals, businesses, and institutions have been changed in this decision in the interests of protecting Applicant's privacy.

Guideline F, Financial Considerations:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 1, 2020. Under Section 26 – Financial Record of the e-QIP, she indicated that she may be delinquent on Federal student loans on her credit reports. She indicated that her Federal student loans were being reviewed for forgiveness as a result of the technical institute's false promises of future employment after graduation. She estimated the total amount of her student loans was \$45,000. She listed no other delinquent debts or financial issues. (Gov 1 at 34-35)

Applicant's security clearance background investigation revealed the following delinquent debts: four delinquent student loans placed for collection owed to the Department of Education in the amounts of \$10,876; \$8,385; \$3,073; and \$532; an approximate total of \$22,866. (SOR ¶¶ 1.a – 1.d: Gov 1 at 34-35; Gov 3 at 5-6; Gov 4 at 2; Gov 5 at 1-2; Gov 6 at 5-6). Four additional student loans were also alleged in the amounts of \$10,531; \$7,019; \$4,823; and \$3,587; an approximate total of \$25,960. (SOR ¶¶ 1.e, 1.f, 1.g, and 1.h: Gov 1 at 34-35; Gov 2; Gov 3 at 5-6)

Applicant admitted all of the debts. She took out these student loans to pay for the technical institute she attended from 2005 to 2009. She chose to attend the technical institute because of their promises of future employment upon graduation. Upon her graduation, she could not find a well-paying job relative to her degree. During college, she worked part-time in a department store. She continued to work at the department store after graduation until she could find a better paying position. Applicant took more classes on software testing to qualify for better paying jobs. In 2013, she was hired as a test engineer for a commercial technical company. She worked for the company until 2015 when her current employer, a defense contractor, hired her. Both of these jobs were unrelated to the field she was trained for at the technical institute. (Tr. 22; Response to SOR; Gov 1 at 34-35; Gov 2)

After her graduation from the technical institute, Applicant's student loans became due in 2010. Her payments were between \$500 to \$800 a month. She made payments for close to a year. She applied for a forbearance in 2011, because of her low income from working at the department store and having to pay out-of-pocket medical costs because she had no health insurance. She applied for and received an extension of the forbearance every six months through October 2020. In October 2020, she was told that she could no longer apply for forbearance. (Tr. 34-38; Gov 2)

In 2019, Applicant learned that a lawsuit was filed against the technical institute based on their false promises of post-graduate employment. A judgment was entered against the technical institute. Applicant was advised to apply for her loans to be discharged under the borrower defense to repayment rules, 34 C.F.R § 685.206(c) or §685.22. She applied for a discharge on July 12, 2021. (AE O) On March 24, 2022, the Department of Education approved her claim for discharge of payment of her federal student loans. This appears to be related to student loan debts alleged in SOR ¶¶ 1.a – 1.d. (Tr. 37; AE A)

After the discharge, she had four remaining federal subsidized student loans in default, an approximate balance of \$22,954. Sometime after March 2022, Applicant submitted a request for reconsideration to request the discharge of the remaining four loans. She hopes to have a decision from the Department of Education by August 2022. She has no other delinquent debts. If her request for reconsideration is denied, she is prepared to enter into a payment agreement on her remaining student loans. Her current monthly income is \$4,100. She has over \$86,000 in savings and over \$36,800 in her retirement account. She is capable of making payments towards the remaining student loans if they do not qualify for discharge. (Tr. 21, 28-30, 40; AE I; AE A; AE B; AE C; AE D)

Applicant earned approximately \$65,000 a year when she worked for her first technical company between 2013-2015. Her current employer hired her in 2015 at the starting annual salary of \$52,000. She was promoted in 2019 and currently earns \$75,000, annually. In 2011, Applicant and her mother moved in with her sister and her husband to save expenses. She does not pay rent, but she helps out with groceries and running errands. In 2015, Applicant needed a car. Her sister bought a car for her in the amount of \$16,000. Applicant paid her sister \$1,000 a month until the car was paid off in 2017. Applicant encountered health issues between 2017 to 2019. She paid approximately \$11,084 for treatments that were not covered by insurance. (Tr. 28-35, 40; AE J; AE K; AE L; AE M)

Whole-Person Factors:

Mr. G., Applicant's brother-in-law, wrote a letter on Applicant's behalf. He has known Applicant for 16 years. He states Applicant is responsible and of great moral character. He states Applicant immigrated to the United States from her home country to escape religious persecution. Despite coming to the U.S. with significant educational and personal impediments, Applicant worked hard to establish herself in the United

States. She worked a near-minimum-wage job during college and for several years after graduation. She received a degree from the technical institute that defrauded her. Mr. G. and his wife have been advocates for Applicant over 10 years. They invited her to leave her apartment and move in with them in order to allow her to attain more financial stability and to recover from the reality that her degree was “empty” or “contained no value” on the open market. He states Applicant is financially secure. He works with her to insure she is contributing to her savings account and retirement account. (Tr. 44; AE E)

Mr. G. states that they have spoken with the staff of Applicant’s technical institute on numerous occasions over the years and sought legal guidance on how to deal with her “empty’ degree.” When claims against the technical institute began to gain traction and Applicant received letters to participate in lawsuits, they determined delaying payments was in the Applicant’s best interests, especially with the eventual guilty pleas of the technical institute. He states Applicant’s loans are being forgiven. As a one-time holder of a security clearance; former contractor of a government agency; and former employee with Navy, he has no doubt Applicant will continue to be a significant asset to the U.S. Government. (AE E)

Applicant’s managers think highly of her. In various feedbacks during her tenure at her current employer, she has been described as “a true team player” She is dedicated to helping others. People on her team rely on her for advice and knowledge-sharing. Applicant is “the go to person” on her team. She is “a huge asset . . . and is a rock star.” (AE M)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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, these guidelines are applied 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 for national security eligibility 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.

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 applicant or proven by Department Counsel. . . .” The applicant 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 the applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of EO 10865 provides that 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).

GUIDELINE F: Financial Considerations

The security concern relating to the guideline for 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

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

At the time the SOR was issued, Applicant had eight delinquent student loans placed for collection, an approximate total of \$48,826. AG ¶¶ 19(a) and 19(c) apply.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. 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))

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's 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; and

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

AG ¶ 20(a) applies because the circumstances Applicant found herself are unlikely to recur and do not cast doubt on her reliability, trustworthiness and good judgment. She struggled financially for a number of years. She was unable to pay her student loans after graduating from a technical institute that falsely exaggerated their ability to find suitable jobs for their graduates. She applied for forbearances due to low income for a number of years. A judgment was entered against the technical institute and Applicant was allowed to apply for a discharge with the Department of Education

under the borrower defense provision in July 2021. In March 2022, the Department of Education discharged four of the loans. Soon after, Applicant applied for reconsideration to seek discharge under the borrower's defense provision for the remaining four loans. She lives within her means and has built up savings over the years. Should the reconsideration request be denied, she intends to and is capable of repaying the remaining student loans. She has no other delinquent debt. The unusual circumstances of this case raise no concerns about Applicant's reliability, trustworthiness, and good judgment.

AG ¶ 20(b) applies, because Applicant was a victim of the predatory lending practices of the technical institute. Upon graduation from the technical institute, Applicant was unable to find well-paying employment despite the promised claims of employment placement by the technical institute. She worked low-paying jobs for several years. She acted responsibly under the circumstances. She applied for forbearances of her student loans, took courses to increase her chances for better employment, and did not incur excessive debt.

AG ¶ 20(d) applies. Applicant was eligible to discharge her student loans under the borrower defense to repayment rules. She applied and was notified in March 2022 that four of the student loans were discharged. She was entitled to submit a request for reconsideration on the four remaining student loans. She submitted the request for reconsideration and is awaiting the results. She saved money over the years and has over \$86,000 in savings. If the reconsideration request is denied, she is willing and capable of paying the remaining balance of the student loans. Under the circumstances, Applicant is making a good-faith effort to resolve her delinquent student loan accounts.

Applicant mitigated the security concerns raised under Financial Considerations.

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 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 considered the favorable feedback on Applicant's performance from her supervisors. I considered the statement from her brother-in-law. While Applicant admitted to over \$45,000 in delinquent student loans, she took out the loans to attend a technical institute that was found guilty of defrauding students by promising them well-paying jobs upon their graduation. Upon her graduation, she discovered it was a worthless degree. She paid for and took more classes so she could qualify to work in the information technology career field. From 2011 to October 2020, she applied for and received a student loan forbearance every six months due to her low income. Upon the advice of her brother-in-law, she delayed making payments on her student loans to await the outcome of the lawsuit against the technical institute.

In 2021, Applicant was able to apply to the Department of Education for a discharge of her federal loans under the borrower defense to repayment rules. Four of her eight student loans were discharged. She submitted a reconsideration to have her four remaining student loans discharged. There is a good chance she will be successful. If she is not successful, she is able to repay the student loan balance. She lives within her means. She has over \$86,000 in savings. Aside from her student loans, she has no other delinquent debt. Her financial situation is stable. She has been open about her student loan situation since the beginning. Applicant proved that she is reliable and trustworthy. Security concerns under financial considerations and personal conduct are mitigated.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a -1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge