



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



In the matter of: )  
)  
) ISCR Case No. 20-00074  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne M. Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

09/20/2022

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**Decision**

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Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 10, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 21, 2022 and November 1, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on May 31, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 8, 2022. As of July 12, 2022, he had not responded. The case was assigned to me on September 8, 2022. The Government exhibits included in the FORM, marked as Items 1-6, are admitted in evidence without objection.

## Findings of Fact

Applicant is a 35-year-old employee of a government contractor for whom he has worked since July 2018. He earned a high school diploma in 2006 and has taken community college and college courses for several years without earning a degree. He is currently attending a trade school. He has not been married and has no children. (Items 2, 3)

The SOR alleges Applicant owes two delinquent loans totaling about \$76,000 (SOR ¶¶ 1.a-1.b). SOR ¶ 1.a is a car loan and SOR ¶ 1.b is a student loan. Applicant denies both debts in his response to the SOR because he alleged he is making monthly payments on the former and he cannot locate the creditor in order to address the latter. Nevertheless, the SOR allegations are established through the Government's evidence. (Items 2-6)

The delinquent auto loan for \$34,707 alleged in SOR ¶ 1.a has not been resolved. In his response to the SOR, Applicant provided documentary evidence that, between January 2020 and April 2022, he paid \$50 per week on an account to the same creditor as that listed in SOR ¶ 1.a. However, this documentation reflects that the account being paid is a student loan account. The debt in SOR ¶ 1.a is an auto loan, so there is no proof that these payments concern the account in SOR ¶ 1.a. Furthermore, there is no documentary proof that any payments have been made on this account since about 2014, the last activity date listed on the August 2019 credit report. (Items 1-3, 5)

The delinquent student loan for \$42,494 in SOR ¶ 1.b has not been resolved. Applicant claimed that he has been unable to locate the creditor in order to attempt to resolve this debt. He does not provide evidence, documentary or otherwise, about what steps he has taken to locate the creditor other than to discuss it with the creditor of another one of his student loans. This debt appears on the May 2022 credit report which reflects a last payment date of April 2018. I take administrative notice that all federal student loans were eligible for placement in a deferment status as of late March 2020 at the earliest. Therefore, available evidence shows that Applicant was delinquent on this debt prior to any placement in a deferment status. Applicant does not provide evidence that the weekly payments that he believes he has been making on the debt on SOR ¶ 1.a are, in fact, being applied to the debt in SOR ¶ 1.b. Applicant acknowledged having other student loan accounts and the account number listed on the documents Applicant provided does not match the account number for the student loan in SOR ¶ 1.b. (Items 1-4, 6)

Applicant claims that he fell behind on his debts because of underemployment. He claims that now that he has his current job, he has enough money to meet his financial obligations and enough money to save for an emergency fund. He did not provide any information about his income or expenses to support this claim. Applicant did not respond to the FORM, so more recent information about his finances is not available. (Item 3)

## 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 within DOD 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 security concern 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.

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

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

Both of Applicant’s delinquent SOR debts remain unpaid or unresolved. The evidence shows that the last payment on the debt in SOR ¶ 1.a was made in 2014. He has a history of unpaid debts. The above disqualifying conditions are raised.

Although President Biden extended a pause on the collection of student loans due to COVID-19, thus creating a deferment period on student-loan payments (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments/>), that action does not excuse previously delinquent student loans. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business

downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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.

The delinquencies are ongoing and therefore recent. The evidence does not show that the debts are resolved or are under control. Applicant's delinquencies were caused by underemployment, which is arguably beyond his control. However, while Applicant provided documents to show that he has been making payments on a debt to the same creditor as the debt in SOR ¶ 1.a, he has not established that those payments are being made on the debt listed in SOR ¶ 1.a. He has not provided sufficient evidence, documentary or otherwise, to show what efforts he has taken to locate the creditor for the debt in SOR ¶ 1.b. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. *See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016)*. Therefore, Applicant has not shown that he has acted responsibly under the circumstances or that he is acting in good faith to pay or otherwise resolve the SOR debts. While Applicant denies these debts in his response to the SOR because he either believes they are being addressed (SOR ¶ 1.a), or cannot address them (SOR ¶ 1.b), for the reasons I already provided, these disputes are not reasonable. The financial considerations security concern is not 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 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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concern.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge