



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



In the matter of: )  
)  
) ISCR Case No. 21-00653  
)  
Applicant for Security Clearance )

**Appearances**

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

10/20/2022

**Decision**

DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On May 11, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR (Answer) on August 16, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on July 18, 2022.

The hearing was convened as scheduled on September 29, 2022. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant did not offer any documents as evidence at the hearing. DOHA received the transcript (Tr.) on October 6, 2022.

## Findings of Fact

Applicant is a 41-year-old employee of a government contractor. He has worked for his current employer since about September 2016. He earned a bachelor's degree in May 2017, after attending classes since 2011. He has been married since May 2009. He has three children, ages seven, three, and one. He served on active duty with the U.S. Marine Corps from April 2005 until January 2011 and received an honorable discharge. (Tr. 28-29, 37; GE 1, 2)

The SOR alleges Applicant's nine delinquent student loans totaling approximately \$63,000 (SOR ¶¶ 1.a through 1.i). In the Answer, he admitted all of the SOR allegations with additional comment and attached documents. His admissions are adopted as findings of fact, and his attached documents are made part of the record. The SOR allegations are established through Applicant's admissions and the Government's evidence. (Answer; GE 1-6)

Applicant claimed his financial issues resulted from a period of marital problems and an unforeseen federal tax burden from the 2016 tax year. He claimed that, in 2017, when he completed the forms for his 2016 federal income tax return, he realized that he owed the IRS about \$6,600 for that tax year. He could not afford to pay that income tax bill, so he "shut down." He did not timely file or pay his 2016 federal income taxes.<sup>1</sup> In August 2019, he filed his federal 2016 tax return and made payment arrangements with the IRS to satisfy his 2016 federal tax debt. In about 2021, he satisfied his 2016 federal income tax debt through monthly payments and offsets. He has not owed federal income taxes after the 2016 tax year because he and his spouse changed their withholdings in 2017. (Tr. 20, 38-48, 68-69; GE 1, 2)

Applicant funded his six years of college with federal student loans. In about February 2017, the grace period on these student loans expired, requiring him to make payments. However, as a result of his marital problems and shutting down from his unforeseen income tax debt, he failed to make the required payments. In January 2019, he received a notice of default that informed him that he must make payments of about \$800 per month on his student loans or his wages would be garnished. He did not voluntarily make the required payments, so his wages were garnished in the amount of about \$200-\$214 per pay period from January 2019 until March 2020. The wage garnishment ended when President Biden automatically deferred all federal student loan payments because of the COVID-19 pandemic. Applicant's student loans are in deferment until the COVID-19 automatic deferral ends. However, his student loans were in default prior to this deferment period. He did not tell his spouse about his student loan default until August 2019. (Tr. 20-21, 37-38, 44, 49-52, 63-64, 67-69; Answer; GE 1-6)

Applicant claimed that he contacted his student loan servicer after the COVID-19 deferment period began. He claimed that, during the COVID-19 deferral period, he filled

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<sup>1</sup> Any adverse information not alleged in the SOR, such as Applicant's failure to timely file and pay his 2016 federal income tax return, cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis.

out the paperwork with his loan service provider to enter into a rehabilitation program, but he learned that his student loans were placed with the Department of Education, so he did not complete the rehabilitation agreement. The only documentary evidence he provided of his contact with his loan servicer is a June 2021 letter from his loan servicer confirming the balance on his student loans and to whom he should make payments. Applicant claimed that once the COVID-19 deferral ends he will have to make several monthly payments of \$1,000, and then his student loans will be rehabilitated. He claimed that once his loans are rehabilitated, his new monthly payment will be about \$1,000. He provided no documents to corroborate his rehabilitation period or his new monthly payment amount. He intends to make those rehabilitation payments when they become due and then resume his normal monthly payments. (Tr. 53-58; Answer; GE 1, 2)

Applicant's take-home pay is about \$4,000 per month. He currently makes about \$108,000 annually. In 2016, he made about \$60,000 annually. In 2020, he made about \$70,000 annually. His spouse shares household income and expenses. She makes about \$100,000 annually. However, her income is commission-based, so it fluctuates. Applicant claimed that he has \$20,000 in a savings account and \$1,000 in a checking account. He claimed that he has money in a retirement account, but he does not know how much. He pays \$1,300 per month towards his mortgage, but that payment will increase to about \$1,700 once he completes a refinance of his mortgage in order to renovate his home. Between late 2019 and early 2021, he purchased two used vehicles, paying a total of about \$7,000 in down payments and borrowing the rest. He pays a total of about \$850 per month on these two car notes. He has not received any financial counseling and does not follow a written budget. (Tr. 28-34, 60-63, 70)

### **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 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.

Applicant has multiple delinquent federal student loans. His federal student loans became delinquent in about 2017. The only payments he made on these student loans were through an involuntary wage garnishment. 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).

The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

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

Applicant simply ignored his financial responsibility with respect to his student loans. He provided no evidence that he was unable to address them. His federal student loan delinquencies resulted from conditions within his control.

A security clearance represents an obligation to the federal government for the protection of national secrets. Accordingly, failure to honor other obligations to the government has a direct bearing on an Applicant's reliability, trustworthiness, and ability to protect classified information. ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While these debts are in a deferment status because of the pandemic, Applicant had already defaulted on them prior to the deferment. When student loans are placed in a deferment status after they are in default, Applicant's past inactions are not excused in the context of security clearance eligibility.

Applicant did not contact his student loan servicer to resolve his delinquencies until after the SOR was issued. His testimony regarding the timing of this contact is equivocal and does not establish that this effort occurred any earlier. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). His only payments on these student loans came as a result of an involuntary wage garnishment. Court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than actions initiated and carried through by the debtor. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019). The timing and nature of his efforts to address these debts undermines his ability to show that he acted in good faith or responsibly under the circumstances.

As evidenced by the money in his savings account, Applicant's seems to have sufficient funds to pay his student loans when they are no longer deferred. However, as he knowingly has not made any voluntary payments since 2017, he has not established a track record of voluntarily complying with his payment requirements. Therefore, I cannot find that his financial problems are unlikely to recur. I find that the security concerns arising out of Applicant's financial problems continue to cast doubt on his reliability, trustworthiness, and good judgment.

### **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 have considered Applicant's military service and honorable discharge. 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.

