



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



In the matter of: )  
)  
) ISCR Case No. 21-02406  
)  
Applicant for Security Clearance )

**Appearances**

For Government: William Miller, Esq., Department Counsel  
For Applicant: *Pro se*

11/01/2022

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant was faced with unforeseen circumstances that adversely affected her finances, and she acted responsibly in addressing her delinquent debts and creating a workable plan to repay her student loans. Guideline F (financial considerations) security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On March 27, 2020, Applicant completed and signed her Questionnaires for Investigations Processing or security clearance application (SCA). On December 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA 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), as amended; 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.

The SOR detailed reasons why the DCSA 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 (financial considerations). On December 28, 2021, Applicant provided a response to the SOR with documentation and requested a hearing. On April 8, 2022, the case was assigned to me.

On July 27, 2022, DOHA issued a notice of hearing, setting Applicant's hearing for August 18, 2022. Her hearing was held as scheduled using the Microsoft Teams teleconference system. At the hearing, Department Counsel offered ten Government exhibits (GE) 1-10; Applicant offered 14 exhibits (AE) A-N; there were no objections and all proffered exhibits were admitted into evidence. I held the record open until September 2, 2022, in the event either party wanted to supplement the record. On August 26, 2022, DOHA received a transcript (Tr.) of the hearing. On August 31, 2022, Applicant submitted one document, which I labeled as AE O, which was admitted into evidence without objection.

### **Findings of Fact**

In Applicant's SOR response, she denied all of the SOR allegations in ¶¶ 1.a through 1.s. The credit reports in the record support the SOR allegations. Additional findings follow.

Applicant is 40 years old, and she has been employed by a government contractor as a budget analyst since October 2019. Her annual salary is about \$112,000. In 2014, she received a bachelor's degree in business management. She married in 2008, and she has two children, ages 11 and 17. She was separated from her spouse from about 2017 until 2020, when they reconciled. She currently possesses a DOD secret security clearance. (GE 1; Tr. 26-32)

### **Financial Considerations**

The SOR alleges 19 delinquent debts; the majority of which are delinquent student loans. At the hearing, Department Counsel divided the SOR debt into three categories: consumer debt (totaling \$3,968), student loans referred for collection with the U.S. Department of Education (ED) (totaling approximately \$127,682), and delinquent student loans held by private debt servicers (totaling \$18,432). Applicant testified that she denied all of the debts in her SOR response, because she did not agree with the "balance" or the "delinquent" status of the account. She admitted, however, that she was responsible for all 19 accounts. (SOR response; Tr. 35-36)

#### **Consumer Debt:**

SOR ¶¶ 1.a and 1.q allege that Applicant owes a total of \$2,786 for delinquent consumer credit accounts placed for collection by the same creditor. She provided sufficient documentation showing that these accounts have been paid. (GE 6; AE F, AE G; Tr. 36-41)

SOR ¶ 1.s alleges that Applicant owes \$1,182 for a consumer credit account that has been referred for collection by a bank. She provided sufficient documentation showing that this account has been paid. (GE 6; AE H; Tr. 41-43)

U.S. Department of Education student loans:

SOR ¶ 1.b alleges that Applicant owes a total of \$32,206 for a delinquent student loan. She provided documentation with her SOR response showing that the loan had been divided into several smaller loans totaling \$24,810, and placed with the ED for collection. The student loans are currently deferred due to the COVID-19 relief pause enacted by the government. Student loan payments are to begin after December 31, 2022. It is her intention to repay her student loans. (GE 8; Tr. 43-46; SOR Response; AE A, AE C, AE O)

SOR ¶ 1.j alleges that Applicant owes a total of \$1,182 for a delinquent student loan that was placed with the ED for collection. The student loan is currently deferred due to the COVID-19 relief pause enacted by the government. Student loan payments are to begin after December 31, 2022. It is her intention to repay her student loan. (GE 6; AE A, AE D, AE O; Tr. 45-53; SOR Response)

SOR ¶¶ 1.c, 1.e, and 1.f allege that Applicant owes a total of \$48,229 for three delinquent student loans that were placed with the ED for collection. The student loans are currently deferred due to the COVID-19 relief pause enacted by the government. Student loan payments are to begin after December 31, 2022. It is her intention to repay her student loans. (GE 8; Tr. 46-53; SOR Response; AE A, AE D, AE O)

SOR ¶¶ 1.h, 1.k, 1.m, 1.n, 1.o, and 1.r allege that Applicant owes a total of \$20,904 for several delinquent student loans that were placed with the ED for collection. The student loans are currently deferred due to the COVID-19 relief pause enacted by the government. Student loan payments are to begin after December 31, 2022. It is her intention to repay her student loans. (GE 8; Tr. 46-53; SOR Response; AE A, AE D, AE O)

SOR ¶¶ 1.d and 1.l allege that Applicant owes a total of \$19,776 for two delinquent student loans that were placed with the ED for collection. The student loans are currently deferred due to the COVID-19 relief pause enacted by the government. Student loan payments are to begin after December 31, 2022. It is her intention to repay her student loans. (GE 8; Tr. 46-53; SOR Response; AE A, AE D, AE O)

Student loans held by private debt servicers:

SOR ¶ 1.g alleges that Applicant owes \$9,749 for a delinquent student loan that was placed with a private debt servicer for collection. The August 2022 credit report reflected the current amount was \$11,823. Applicant provided documentation that showed she had rehabilitated this student loan in 2020 after making nine consecutive monthly payments, and then had the student loan placed in forbearance. It is her intention to repay her student loans. (GE 6; AE E; Tr. 53-60; SOR Response)

SOR ¶ 1.i alleges that Applicant owes a total of \$7,192 for a delinquent student loan that was placed with a private debt servicer for collection. The August 2022 credit report reflected the current amount was \$8,722. Applicant provided documentation that showed she had rehabilitated this student loan in 2020 after making nine consecutive monthly payments, and then had the student loan placed in forbearance. It is her intention to repay her student loans. (GE 6; AE E; Tr. 53-60; SOR Response)

SOR ¶ 1.p alleges that Applicant owes a total of \$1,491 for a delinquent student loan that was placed with a private debt servicer for collection. The August 2022 credit report reflected the current amount was \$1,808. Applicant provided documentation that showed she had rehabilitated this student loan in 2020 after making nine consecutive monthly payments, and then had the student loan placed in forbearance. It is her intention to repay her student loans. (GE 6; AE E; Tr. 53-60; SOR Response)

Applicant began to experience financial problems after she separated from her spouse in 2017. He had been laid off, and he was not providing any money to assist with the household expenses. She also received a significant pay cut after leaving her position where she earned about \$55,000 per year, to accept a civilian position with the DOD. She was placed into a trainee program, and her annual salary was approximately \$46,000. In September 2017, she left her government job to work for a government contractor, and her salary increased from about \$46,000 to \$65,000. Applicant and her spouse eventually reconciled and they moved back into the family home in 2020. Her husband also returned to work for his employer where he earns about \$55,000 annually. (Tr. 61-66)

Applicant filed for a Chapter 13 bankruptcy in 2006. During that period of time, she was a young mother and had purchased a family car financed by a loan with a high interest rate. She worked part-time at a bank, and soon found herself obtaining money from a payday lender to keep her car payments current. It did not take long to concede she was in serious financial trouble. Applicant and her spouse filed for Chapter 13 bankruptcy protection, because they wanted to pay off their debts and keep the family car. The bankruptcy trustee administered the five-year repayment plan, but they successfully finished their payments in four years. The bankruptcy court discharged the case in 2010. (GE 9; Tr. 68-73)

Applicant provided a financial summary and monthly budget post-hearing. In an attachment statement, she explained that she was already working to resolve her delinquencies prior to the date she became aware that the government was concerned about her financial issues. She rehabilitated her student loans held by private debt servicers and placed the loans into forbearance. Her student loans with the U.S. Department of Education were deferred due to the COVID-19 pandemic. She then focused her attention on paying off all of her delinquent consumer accounts with her disposable income. She is scheduled to begin her student loan payments after December 31, 2022. She provided documentation of her efforts to consolidate all of her student loans, except her Perkins loans, under the Direct Loan Program. Beginning October 1, 2022, it is her intention to pay approximately \$300 each month to reduce the accruing interest on her student loans. She provided a Personal Financial Statement, which

showed a household monthly net income of \$8,264. After their monthly expenses and debt payments, to include an estimated monthly student loan payment of \$760, they have a monthly net remainder of \$3,204. She explained that they were unable to use more of their disposable income to make interest payments on her student loans earlier due to unforeseen expenses, to include a transmission replacement, sport camp fees, and the expense of visiting several colleges with her older son. It is her intention to live within her means going forward and not accumulate any delinquent debt. (AE A, AE I, AE J, AE K, AE O; SOR Response)

## 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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 Director of National Intelligence 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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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**

### **Guideline F: 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 two 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.

Five financial considerations mitigating conditions under AG ¶ 20 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;

(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 has a history of not meeting financial obligations. She had a previous Chapter 13 bankruptcy and discharge in 2010, but in 2017, her finances became delinquent again. Circumstances beyond Applicant's control adversely affected her finances, including an unforeseen separation and loss of income from her spouse from 2017 through 2020. Additionally, she experienced a period of underemployment, to include a reduction of about \$10,000 of her annual salary when she accepted a new job. However, "[e]ven if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

There is sufficient evidence that the consumer debts alleged in SOR ¶¶ 1.a and 1.q and 1.s, totaling about \$3,968, have been paid. I find that Applicant mitigated these SOR allegations.

Applicant's income has increased over recent years and is now six-figures. Her most recent budget showed that she had a net monthly remainder of \$3,000 after paying expenses, to include her estimated monthly student loan payment beginning in January 2023. Although there is insufficient evidence to establish a track record of steady student loan payments, I find Applicant to be credible in her on-going efforts to resolve her student loans; some that were delinquent before the COVID relief was enacted, and some that were rehabilitated after she made nine consecutive monthly payments.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

In December 2021, Applicant provided documentation with her SOR response of her good-faith actions to resolve her delinquent debts. I find that Applicant acted in a reasonable and responsible manner when dealing with her financial delinquencies by paying off her consumer debt, rehabilitating her student loans with private servicers, and submitting paperwork to consolidate almost all of her student loans. She has established a workable monthly budget and has not created any new delinquent debt. It is clear that she is committed to repaying all of her outstanding student loan accounts. I find that 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 that guideline but some warrant additional comment.

Applicant's actions have removed any lingering doubts about her commitment to resolving all of her delinquent accounts. She has demonstrated the requisite good judgment, reliability, and trustworthiness that is required for continuing a security clearance.

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 successfully 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 – 1.s:	For Applicant

## **Conclusion**

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Pamela C. Benson  
Administrative Judge