



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-03586
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
 For Applicant: *Pro se*  
 11/16/2022

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant’s financial problems are the result of chronic underemployment, not irresponsible or reckless financial behavior. Furthermore, there is no evidence in the record to suggest that Applicant has an unwillingness to abide by rules and regulations. Clearance is granted.

**Statement of the Case**

On February 5, 2020, the DOD issued an SOR detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it was clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to grant his security clearance. Applicant timely answered the SOR and requested a hearing.

At the hearing convened on December 6, 2021, I appended to the record as Hearing Exhibits (HE) I and II, respectively, the Pre-Hearing Order, dated November 18, 2021, and the Government's Disclosure Letter, dated November 21, 2020. I also admitted Government's Exhibits (GE) 1 through 4, without objection. After the hearing, I left the record open to allow Applicant to submit additional documentation. He timely submitted Applicant Exhibits (AE) A through M as listed below, without objection from Department Counsel:

- A: Student Loan Account Summary SOR ¶¶ 1.a, 1.b, 1.c, and 1.e, Loan Servicer 1 (LS1), as of March 2022 (5 pages);
- B: Student Loan Account Summary SOR ¶¶ 1.a, 1.b, 1.c, and 1.e, LS1, as of April 2022 (6 pages);
- C: Student Loan Payment History, SOR ¶ 1.a, LS1, dated December 24, 2021 (1 pages);
- D: Student Loan Payment History SOR ¶¶ 1.b, 1.c, and 1.e, LS1, as of April 2022 (3 pages);
- E: Student Loan Account Summary, Loan Servicer 2 (LS2), as of April 2022 (2 pages);
- F: Student Loan Account History SOR ¶ 1.d, LS2, dated December 24, 2021 (2 pages);
- G: Student Loan Payment Receipt SOR ¶ 1.d, LS2, dated October 23, 2019 (5 pages);
- H: Student Loan Payment Receipt SOR ¶ 1.d, LS2, dated August 22, 2019 (5 pages);
- I: Student Loan Payment Receipt SOR ¶ 1.d, LS2, dated Jul 15, 2019 (5 pages);
- J: Student Loan Account History (unalleged), LS2, dated December 24, 2021 (2 pages);
- K: Student Loan Payment History (unalleged), LS2, dated December 24, 2021 (1 page);
- L: Payment Receipt, medical expenses, April 2019 through August 2019, (1 page); and
- M: Payment Confirmation – medical expense, dated April 26, 2019 (1 page).

DOHA received the transcript on December 10, 2021.

### **Findings of Fact**

Applicant, 32, has worked for a federal contracting company as a structural engineer since February 2018. He completed a security clearance application, his first, in October 2018. Applicant's background investigation revealed that he has delinquent student loan debt. The SOR alleges that he owes \$35,887 on five delinquent student loans. He admits the allegations. (Tr. 17-18; GE 1)

Applicant attended college between August 2008 and December 2013, graduating with a degree in visual media design. He financed his education with student loans, borrowing \$22,000. After graduation, he completed an unpaid internship. He did not secure a paying job until August 2014, when he began working for a small graphic design company. He left the job after six months and was unemployed for two months before finding a part-time retail position. He started a full-time position as a graphic designer with another company in September 2015. He left the position a month later, citing a mutual agreement between himself and the company. Because he did not own his designs, he could not develop a professional portfolio, which was necessary to show prospective graphic design employers. In effort to develop more transferrable skills, Applicant enrolled in a local community college to take classes in architectural drawing. He took classes between July 2016 and December 2017, which he paid for out of pocket. (Tr. 18-19, 23-24, 42-43)

Between November 2015 and 2018, he worked a series of low-paying, entry-level retail jobs. He could not afford to make payments on his student loan accounts. He received the offer of employment from his current employer in November 2017. Because he thought he would begin work immediately, he moved from his apartment in his hometown in State 1 to the location of the new job in a higher cost of living market in State 2. However, he did not receive a start date for another three months. In addition to the higher cost of living, Applicant has experienced a series of financial setbacks. In August 2018, he experienced a medical crisis and passed out at work. He required surgery and the treatment resulted in \$560 medical bills, which he paid between April and August 2019. Because the incident happened at work, his employer required him to go on short-term disability until the facility's medical office deemed him able to return to work. Applicant was out of work for approximately one month. (Tr. 20-22, 30-32, 46-48; GE 2; AE L-M)

In November 2018, his car became inoperable months before he satisfied the loan on the vehicle. Once the loan was satisfied, he planned to apply the monthly payment toward his student loans. Instead, he purchased a new car, which was totaled in an accident shortly after he purchased it. In late 2018, Applicant's father began to experience significant health issues and became unable to work sometime in 2019. Applicant began making bi-monthly trips to State 1 to help his mother care for his father. Although Applicant does not provide his parents financial support on a regular basis, he incurs expenses related to his trips to State 1 and assists his parents with food and other expenses, as needed. (Tr. 30-33, 48, 51; GE 2)

In the nine years since he graduated from college, the balance of his student loan accounts has more than doubled. According to the credit reports in the record, the balance has increased from \$22,000 to over \$52,000. Between 2018 and 2019, he made \$1,000 in payments on the loans alleged in SOR ¶ 1.d. He also paid \$180 on an unalleged student loan account. Currently, his student loan accounts are in good standing because of the Covid-19 student loan payment pause issued by President Biden in March 2020. Applicant testified that he does not earn enough money to pay his living expenses and his student loans. He is aware that his income makes him available for loan forbearance once the pause is lifted. However, because of the accruing interest, he is hesitant to apply for the relief even if doing so returns his student loans to good standing. (Tr. 26-27, 53-54; AE A-I, K)

Applicant is a salaried employee. His net income is just over \$31,000 annually. His recurring expenses are for housing, transportation, and food. He cancelled his internet service to reduce his monthly expenses. After paying his recurring bills each month, he has approximately \$300 in disposable income. The credit reports in the record show an otherwise favorable credit history. Applicant does not have any credit cards. His only consumer debt is for his car loan. The account is in good standing. (Tr. 22; GE 3-4)

Although Applicant does not have a government-issued security clearance, his employer has granted him access to proprietary information related to his job duties. Applicant reported that he has handled that responsibility without incident. (Tr. 38)

### **Policies**

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(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 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 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**

An individual’s finances become a concern when their failure to meet their financial obligations is a possible indication of 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. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18)

The record establishes the Government’s *prima facie* case. Applicant has five delinquent student loans, which he cannot afford to pay. The following financial considerations disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

The record contains some evidence in mitigation. Since graduating from college in 2013, Applicant has not been in a financial position to make consistent payments on his student loans. This is the result of chronic underemployment between 2013 and 2018. Despite a series of events beyond his control between 2018 and 2019, including a health emergency as well as his father’s failing health, Applicant has acted responsibly in light of his circumstances. He paid over \$1,000 toward his student loans between 2018 and 2019. The accounts are currently in good standing due to the Covid-

19 payment pause. He lives modestly and within his means. Aside from the student loans, he has a favorable history of debt repayment on his other consumer credit accounts. The record does not contain evidence of financially irresponsible or reckless behavior. Financial considerations mitigating condition AG ¶ 20(b), “the conditions that resulted in the financial problems were largely beyond the person’s control . . . , and the individual acted responsibly under the circumstances,” applies.

Based on the record, I have no doubt about Applicant’s suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). The purpose of a security clearance adjudication is not debt collection. Rather the purpose is to make “an examination of a sufficient period and a careful weighing of a number of variables of an individual’s life to make an affirmative determination that the person is an acceptable security risk.” (AG ¶ 2(a)) Here, Applicant’s financial problems do not indicate poor self-control, lack of judgment, or an unwillingness to follow rules and regulations. The circumstances that caused his financial problems do not raise questions about his reliability, trustworthiness or ability to properly handle or safeguard classified information. A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns raised under the financial considerations guideline 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, Financial Considerations:                   FOR APPLICANT

Subparagraphs 1.a – 1.e:                                           For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant’s eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge