



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 21-02040
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: *Pro se*  
08/26/2022

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on his federal student loans totaling over \$50,000. He has not made any effort to educate himself about his loans or arrange for their rehabilitation. Clearance eligibility is denied.

**Statement of the Case**

On November 12, 2021, the then Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On November 18, 2021, Applicant responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). His response was considered incomplete because he did not admit or deny the allegations. On February 28, 2022, Applicant admitted the two SOR allegations. On April 19, 2022, Department Counsel indicated that the Government was ready to proceed to a hearing. On May 5, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file and assignment on May 9, 2022. After some coordination with the parties, on June 10, 2022, I scheduled a video teleconference hearing for June 29, 2022.

At the hearing convened as scheduled, three Government exhibits (GEs 1-3) were admitted into the record without objection. An April 19, 2022 letter from Department Counsel forwarding copies of the GEs to Applicant was marked as a hearing exhibit (HE 1). At the Government's request, I took administrative notice of Title 20, Section 1091a of the United States Code which ensures that obligations to repay federal student loans are enforced without regard to any federal or state limitation on the period within which debts may be enforced. Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on July 15, 2022.

In reviewing this case, I *sua sponte* noted that the Coronavirus Act, Relief, and Economic Security Act (CARES Act), effective March 27, 2020, provided for the suspension of federal student-loan payments and collection actions on eligible defaulted federal student loans, and set interest rates to zero percent, initially through September 30, 2020. The present extension of the CARES Act, which provides for the suspension of federal student-loan repayment and collection actions, is scheduled to continue through August 31, 2022.

### **Findings of Fact**

The SOR alleges that, as of November 12, 2021, Applicant owed \$51,424 in federal student loans in collections status (SOR ¶ 1.a) and a \$630 medical debt in collections (SOR ¶ 1.b). When Applicant responded to the SOR allegations, he admitted the debts without explanation.

Based on his admissions, I accept and incorporate as factual findings that Applicant defaulted on the SOR debts. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 46-year-old planning production control specialist who has worked for a defense contractor since December 2020. (GE 2; Tr. 25-26.) He was married to his first wife from March 1999 to May 2021. (GEs 1-2; Tr. 22-23.) She worked in a bank, earning \$50,000 a year, and handled the household finances during their marriage. (Tr. 35, 39-40.)

Applicant and his current spouse wed in October 2021. (Tr. 22-23.) Her 15-year-old son lives with them. (Tr. 33.) Applicant has two sons now ages 21 and 14 from his first

marriage for whom he paid child support of \$1,300 per month. As of the close of the record in this case, he had a hearing scheduled for August 3, 2022, to remove his older son from his child support obligation. He expects to pay around \$788 per month for child support for his younger son going forward. (Tr. 23-24.)

Applicant earned his associate's degree in July 2007. He completed his bachelor's degree in business management online. (GE 2; Tr. 24-25.) On a November 5, 2020 Questionnaire for National Security Positions (SF 86), he indicated that he took courses from September 2012 to May 2014 at the online university from which he earned his bachelor's degree. (GE 1.) During a personal subject interview (PSI) with an authorized investigator for the Office of Personnel Management (OPM) on December 17, 2020 (GE 2), he stated that he earned his bachelor's degree in May 2009. On January 21, 2021, he was confronted by the investigator with information showing that he took online classes between July 2010 and November 2014 with breaks in his attendance. He disputed the information and stated that he was awarded his bachelor's degree in May 2009. (GE 2.) Student loan information reported on his credit report (GE 3) appears to corroborate the enrollment dates reported by the university.

Applicant's December 2020 credit report shows that he obtained student loans to pay for his college education, including eight federal student loans totaling \$34,033 obtained through the schools between December 2005 and July 2010, and a \$16,192 student loan acquired in May 2014. As of November 2020, those loans were in collections status with an aggregate balance of \$51,424. Between July 2007 and December 2007, Applicant obtained additional student loans totaling \$14,646 that were being repaid on time. As of October 2020, the outstanding balances on those loans totaled only \$994. Applicant's credit report also showed that a \$630 medical debt from August 2018 was in collections. (GE 3.)

Sometime in 2018, Applicant found a collection notice for his defaulted federal student loans in the household trash. He confronted his then spouse about her failure to make his student loan payments for him and told her to resolve the issue, but he did not handle it himself. When he tried to get involved in the household finances, she would "make it miserable," and he did not want to deal with her. He was also overwhelmed by the loan balances in collections. (Tr. 38-41.) Even after his marital separation in May 2020, he took no steps to address his defaulted student loans because he was focused on obtaining custody of his younger son and wanted to ensure that he had the funds to pay for any legal fees incurred. (Tr. 41-42.)

Applicant disclosed on his November 2020 SF 86 that he was in default of his federal student loans totaling about \$50,000. In response to an SF 86 inquiry into any actions taken to satisfy the debts, Applicant responded, "got an email about loan forgiveness." (GE 1.) He provided no proof that he qualified for forgiveness, cancellation, or discharge of any of his federal student-loan debts, and admitted at his June 2022 security clearance hearing that none of his student-loan debts had been forgiven. (Tr. 44.) He discovered that the email had been a scam. (Tr. 58.)

During his December 17, 2020 PSI, Applicant did not dispute that his federal student loans were in collections status. He expressed an intention to satisfy the debts once his divorce from his first wife was final. He explained that she had handled the household finances during their marriage and that, unbeknownst to him at the time (Tr. 38), she stopped making payments on his student loans when the monthly payment became \$2,500. He stated that the issue of his defaulted student loans was being worked out in his divorce settlement. When confronted with the \$630 medical debt in collection, Applicant did not dispute the debt, and surmised that he and his first wife could be jointly liable as it was for the care of one of their sons. He described his finances as improved since his divorce filing, and he expressed a willingness and ability to repay his debts. (GE 3.)

Around the time of his marital breakup in 2020, Applicant asked a friend who is a financial advisor if he should withdraw funds from his 401(k) account to pay his student loans. His friend advised against doing so if it was not required and told him that any payments would adversely impact his credit as they would reactivate his accounts. Applicant gave priority to rebuilding his credit after a “pretty messy” divorce and took no action that would reactive his student loan accounts. (Tr. 19-21, 42-44.)

In their divorce settlement, Applicant took responsibility for his defaulted student loans and his car while his ex-wife was given the house, her car, and \$100,000 of his \$300,000 in 401(k) assets. (Tr. 37, 50.) As of his June 29, 2022 security clearance hearing, Applicant had not attempted to rehabilitate his student loans. His ex-wife has all the documentation for his student loans. She told him she does not know the whereabouts of his student-loan documentation, although he has some doubts in that regard. (Tr. 54-55.)

Applicant testified that he is willing to pay off his student loans with funds from his 401(k) account, if necessary. (Tr. 19, 43.) He put off addressing his student loans in that manner pending assurance from the Government that paying off his defaulted student loans would fully resolve the security concerns. (Tr. 56.)

After Applicant received the SOR, he contacted his creditor to whom he owed the \$603 medical collection debt. He was informed the debt was for a 2018 procedure. He plans to pay the debt after he receives requested documentation about the debt. (Tr. 44, 46.)

Applicant worked as a computer room supervisor for a company in the commercial sector from January 2001 until October 2020, when he was terminated for failing to follow company procedure. At the time of his termination, his salary was \$82,000 annually. (GEs 1-2; Tr. 29.) He received unemployment compensation for a month or two before starting his present employment in December 2020. (Tr. 29.)

Applicant’s current salary with the defense contractor is \$73,000 annually. He started on second shift in December 2020 and was paid a shift differential of \$6,000 until he transitioned to the day shift. After his first year on the job, he received a pay increase equivalent to 3% of his salary. (Tr. 27.) His spouse started working in 2021 as a preschool teacher at \$16 an hour. (Tr. 30.) She previously worked for a bank. (Tr. 35.) She owns their

home and does not have a mortgage. (Tr. 35.) She has a yearly condominium fee of \$650. (Tr. 59.) Applicant and his spouse split the household expenses. (Tr. 32, 35.) He described their current household finances as “tight” with about \$200 to \$300 in discretionary monthly income, but he expects their finances to improve once his child-support obligation is reduced. (Tr. 51.) He has about \$4,000 to \$5,000 in his savings account and \$200 in his checking account. (Tr. 49.) He obtained an automobile loan for \$21,323 in July 2016. As of October 2020, he had been making his payments according to terms since late spring 2017. His loan was 30 days past due three times between November 2016 and April 2017. (GE 3.)

As of June 2022, Applicant had paid about \$10,000 in attorney fees for his divorce. He expects to incur additional legal fees for the hearing to reduce his child-support obligation. (Tr. 36-37.)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 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 that 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. 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).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns about financial considerations are articulated 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 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.

Guideline F security concerns are established when an individual does not pay financial obligations according to terms. Applicant does not dispute that he defaulted on approximately \$51,424 in federal student-loan debts and that he owes a \$603 collection debt for his son’s medical care. Under Guideline F, disqualifying condition AG ¶ 19(c), “a history of not meeting financial delinquencies,” is established.

Applicant bears the burden of mitigating the negative implications for his financial judgment raised primarily by his defaulted student loans. Application of the aforesaid disqualifying condition triggers consideration of the potentially mitigating conditions under AG ¶ 20. The following are relevant to the issues 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; and

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

AG ¶ 20(a) cannot reasonably apply, even though the SOR debts were incurred some time ago. Some of the student loans were obtained between December 2005 and March 2007, but Applicant has not made any effort to address his sizeable student-loan delinquency. Regarding the medical collection debt, he contacted his creditor about the medical debt after he received the SOR, but it remains outstanding. An applicant's ongoing, unpaid debts evidence a continuing course of conduct and are considered recent. See, e.g., ISCR 17-03146 at 2 (App. Bd. Jul. 31, 2018), citing, e.g., ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017).

AG ¶ 20(b) has some applicability in that Applicant's ex-wife did not inform him that she was not making the required payments on his federal student loans at issue. However, AG ¶ 20(b) also requires that the individual act responsibly under his or her circumstances. Applicant did not exercise sound financial judgment in several aspects after he learned in 2018 that his loans were in collection status. He confronted his then spouse and told her to take care of the issue. However, he made no effort to ensure that actions were taken to address the delinquent accounts. On his marital separation, Applicant asked a friend whether he should use money from his 401(k) account to pay the defaulted student loans. Advised that any attempts at repayment would negatively impact his credit, Applicant continued to ignore his student-loan delinquencies, even after being placed on notice during his December 2020 PSI that they were of concern to the DOD and after he was held solely liable for repayment in his divorce settlement. AG ¶ 20(b) is not fully established.

Under the CARES Act, collection efforts are suspended through August 31, 2022, for federal student loans eligible for relief. Direct loans, both defaulted and not defaulted, qualify. Perkins loans are eligible if held by the DoED and not the educational institution. He testified that he obtained all of his loans through the schools he attended, but he was not specific as to the type of loans he acquired. It cannot be determined from the account information of record whether his repayment responsibility is currently suspended for any of his federal student loans because of the CARES Act. Even assuming that Applicant has not been required to make any student loan payments since March 2020, I cannot apply either AG ¶ 20(c) or AG ¶ 20(d) because of his failure to take any steps before March 2020 to address the student loans after he learned they were in collections. His willingness to use his retirement assets to pay the loans appears to be conditioned on assurance from the DOD of a favorable adjudication. Just as the security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts, it is not the position of the DOD to direct the manner in which an applicant handles his or her financial obligations. Applicant's ongoing disregard of his contractual obligation to repay his student loans continues to raise doubts about his financial judgment.

Applicant demonstrated some good faith under AG ¶ 20(d) by contacting his creditor about the medical collection debt. Even so, he has not made any payments toward the debt. The Appeal Board has also held that an applicant must demonstrate "a plan for debt payment, accompanied by concomitant conduct, that is, conduct that evidences a serious intent to resolve the debts." See ADP Case No. 17-00263 at 4 (App. Bd. Dec. 19, 2018) (citing, e.g., ISCR Case No. 16-03889 at 5 (App. Bd. Aug. 9, 2018)). A promise to pay a debt at some future date is not a substitute for a track record of timely debt payments or otherwise financially responsible behavior. See ISCR Case No, 07-13041 at 4 (App. Bd. Sep. 2008). The financial considerations security concerns are not mitigated.

### **Whole-Person Concept**

In assessing the whole person, the administrative judge must consider the totality of Applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

(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.

The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.



The security clearance adjudication is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness with regard to his fitness or suitability to handle classified information appropriately. See ISCR Case No. 09-02160 (App. Bd. June 21, 2010). It is not intended as punishment for past shortcomings. There is some evidence of financial responsibility in that Applicant appears to be paying his living expenses on time. There is no evidence of overextension on credit cards. A car loan was past due 30 days three times, but it has not been late since about April 2017.

Appendix C of Security Executive Agent Directive (SEAD) 4 grants DOHA administrative judge's the discretionary authority to grant initial or continued eligibility for a security clearance *despite the presence of an issue(s) that can be partially but not completely mitigated* with the provision of additional security measures. See, also, Memorandum, Director for Defense Intelligence (Intelligence and Security), dated January 12, 2018, ("Appendix C identifies authorized exceptions that are to be utilized when making adjudicative decisions to grant initial or continued eligibility for access to classified information or to hold a sensitive position. . . Effective immediately, authority to grant clearance eligibility with one of the exceptions enumerated within Appendix C is granted to any adjudicative, hearing, or appeal official or entity now authorized to grant clearance eligibility when they have jurisdiction to render the eligibility determination.")

After carefully considering and weighing the financial considerations security concerns, I decline to exercise the discretionary authority under Appendix C at this time. Individuals granted eligibility for access to classified information must be held to a standard of good judgment, reliability, and trustworthiness which, at times, may require her or him to make choices that are personally difficult or disadvantageous. Applicant has prioritized his self-interest over addressing the debts of security concern.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990). Based on the evidence of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant at this time. This decision should not be construed as a determination that Applicant cannot in the future attain the reform necessary to establish his security worthiness, especially if he is able to provide a track record of financial stability and of payments on his defaulted federal student loans. Persuasive evidence of Applicant's security worthiness is lacking at this time.

### **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**

In light of all of the circumstances, it is not 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 denied.

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Elizabeth M. Matchinski  
Administrative Judge