



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



In the matter of: )  
)  
) ISCR Case No. 20-02992  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel O’Reilly, Esq., Department Counsel  
For Applicant: *Pro se*

\_\_\_\_\_ )  
01/18/2023

**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 failed to mitigate the security concerns raised by his defaulted student loans and his deliberate failure to disclose the loans on his security clearance application. Clearance is denied.

**Statement of the Case**

On January 11, 2021, the DOD issued an SOR detailing security concerns under the financial considerations and personal conduct guidelines. 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 is 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 July 21, 2022, I appended to the record as Hearing Exhibits (HE) the following documents:

HE I: Prehearing Order, dated April 22, 2022; and

HE II: Government's Disclosure Letter to Applicant, dated May 20, 2021.

I admitted Government's Exhibits (GE) 1 through 3, and Applicant's Exhibits (AE) A through D, without objection. DOHA received the transcript on August 1, 2022.

### **Findings of Fact**

Applicant, 31, has worked for a federal contracting company as a program analyst since June 2016. He completed his first security clearance application in 2014, and was initially granted a security clearance in 2015. He completed his most recent security clearance application in September 2019. The investigation revealed that Applicant owed \$45,560 for 12 delinquent student loans. (GE 1- 3)

Applicant attended college from August 2009 to May 2014. Since graduating, he has not experienced any period of unemployment. He is unmarried and has no dependents. He lives rent-free in his parents' home, but contributes between \$200 and \$500 each month toward household expenses. He uses his salary, which is now approximately \$57,000 annually, toward traveling and other personal expenses. Applicant testified that he did not pay his student loans because they slipped his mind. He made a few payments after the servicer contacted him in 2015 and 2016. He did not make any payments after mid-2016 and defaulted on the loans in April 2019. (GE 1-3; Tr. 8-25, 31-34)

After receiving the SOR in January 2021, Applicant contacted the collection agency to rehabilitate the loans. He completed the rehabilitation program in November 2021. The loans have not been consolidated. They remain 12 separate accounts, each with their own repayment terms. Because of the student loan payment pause initiated by President Biden in March 2020, Applicant is not currently required to make payments on the accounts. However, the servicer informed him that the pause did not prohibit him from making payments. Applicant has chosen not to do so, and plans to pay the loans when the pause expires in approximately August 2023. (See <https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest>, *COVID-19 Loan Payment Pause and 0% Interest*; AE A-D)

After paying his recurring expenses each month, which includes his car payment, cell phone, and a medical subscription payment, Applicant has between \$1,200 and \$1,300 in disposable income. He has less than \$10,000 in other assets. The repayment terms of the 12 loans are unclear from the record, but he testified that he would be able to afford the payments. (Tr. 23, 26-30, 35-36)

When Applicant completed the security clearance application in September 2019, he disclosed one derogatory account in response to Section 26 – Financial Record. He disclosed a 2013 eviction for non-payment of rent and the settlement of that \$11,000 account in 2014. He explained the origin of the debt and provided a detailed explanation of its resolution. He did not disclose his delinquent student loan accounts. In his February 2020 subject interview, the background investigator asked Applicant if he had been over 120 days delinquent on any debt; to which Applicant answered ‘no’. After the investigator confronted him with evidence of the student loan accounts, Applicant acknowledged that he owed the accounts, explaining that he had not paid the student loans because they slipped his mind and that he had other bills to pay. At the hearing, he could not provide a reason for failing to disclose his delinquent student loan accounts. (GE 1-2; Tr. 31, 38-40)

The record contains a January 2020 credit report. Applicant’s credit history begins in September 2009, when he opened his first student loan accounts. Aside from the 12 student loan accounts, Applicant only has four other consumer credit accounts, which he opened between 2016 and 2017. Those four accounts are in good standing. The only reported derogatory accounts are the defaulted student loans. (GE 3)

### **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**

Failure to meet one’s 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. 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. Despite having the means to do so, Applicant failed to pay his 12 student loan accounts which went into default in April 2019. The following financial considerations disqualifying conditions apply:

AG ¶ 19(b) unwillingness to satisfy debts regardless of the ability to do so;  
and

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

Although the Applicant has successfully rehabilitated the loans, he has not mitigated the alleged security concerns. He did not provide a reasonable explanation for his decision to default on his student loans. Since graduating from college, he has not experienced any financial or personal issues that has prevented him from doing so. He only began the rehabilitation process after receiving the SOR in January 2021. Since rehabilitating his loans in November 2021, he has not demonstrated a track record of loan repayment. While he is not required to make any payments under the student loan payment pause, he is not prohibited from doing so. In this case, the lack of payment history does not lend credibility to his promise to pay the debts when the pause expires.

## **Guideline E, Personal Conduct**

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. (AG ¶ 15) The SOR alleges that Applicant intentionally failed to disclose 12 delinquent student loans in response to questions under Section 26 – Financial Records. Specifically, the section seeks information about any delinquent Federal debts; any defaulted loans; any debts turned over to a collection agency; and any debts over 120 days past due in the seven years preceding the security clearance application.

Applicant admitted that he did not pay his student loans, only making sporadic payments when contacted by the loan servicer. He defaulted on the accounts in April 2019. He denies the falsification allegations, claiming that the omission was not intentional, and that the student loans slipped his mind. A finding of intentional falsification requires a finding of fact as to an applicant's state of mind when the alleged falsification occurred. On its own, an omission does not prove or establish intent or state of mind. In this case, the record contains sufficient evidence of circumstantial evidence of Applicant's intent to falsify his security clearance application. Accordingly, the following disqualifying condition applies:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

None of the personal conduct mitigating conditions apply. Applicant's explanation about the omission was not credible. The student loans and the servicer's collection attempts were contemporaneous to his completion of the security clearance application. His explanation proves even less credible given the detailed disclosure he provided about his 2013 eviction, a matter resolved five years before he completed the September 2019 application. Furthermore, Applicant's financial history is not very extensive and is comprised mostly of student loans. Of the 16 accounts reported on Applicant's credit report, 12 are the delinquent student loans. It is unlikely that he was unaware of their status or that he did not think of the loans when completing the security clearance application.

Based on the record, doubts remain 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). Applicant did not meet his burden of production or persuasion to mitigate the security concerns raised in the SOR.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.l:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Applicant's eligibility for continued access to classified information is denied.

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Nichole L. Noel  
Administrative Judge