



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



In the matter of:)
)
) ISCR Case No. 21-02350
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2022

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance. Applicant’s misunderstanding of the repayment terms of seven student loans led to their delinquent status. She has enrolled in a rehabilitation program set to begin after the Covid-19 student loan payment pause expires on December 31, 2022. Clearance is granted.

Statement of the Case

On November 12, 2021, the DOD issued a Statement of Reasons (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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, implemented on June 8, 2017. DOD adjudicators

were unable to find that it is clearly consistent with the national interest to grant Applicant's security clearance.

Applicant answered the SOR and requested a decision without a hearing. Government Exhibit (GE) 1. The Government submitted its written case on May 26, 2022. The Government provided Applicant with a complete copy of the file of relevant material (FORM) and the Directive. She acknowledged receipt of the documents on June 13, 2022, and did not respond. The attachments to the FORM are admitted to the record as GEs 1 through 7.

Findings of Fact

Applicant, 28, has worked on the same federal contract as a research analyst since August 2016. Her current employer was awarded the contract in March 2020. She was initially granted national security eligibility in January 2016 by another government agency. She completed her most recent security clearance application in January 2021, disclosing \$23,000 in delinquent student loans. She explained that the delinquency was caused by a mistake she made regarding the repayment terms of her student loans. The SOR alleges that Applicant owes approximately \$24,000 on seven delinquent student loan accounts, which she admits. (GE 2-3)

Applicant attended college between August 2012 and May 2016, but did not earn a degree. She financed her education with student loans. When she entered repayment, she mistakenly believed that her nine loans were consolidated into two categories: subsidized and unsubsidized. Accordingly, each month, she made a payment to each category of loans. Less than a year later, she received a letter from the U.S. Department of Education. She misread the letter and thought that the agency had forgiven some portion of her loans. In early 2020, she received a notice from a collection agency, informing her that seven of her loans were in default. The March 2021 credit report, GE 6, shows that two of the loans have a history of timely payment and seven loans were in collection status. (GE 5-6)

In June 2021, Applicant received a letter from a student loan collection agency regarding the process for rehabilitating her student loans. She completed the first step of that process by signing a rehabilitation agreement in June 2021, agreeing to make nine, on-time payments of \$207. The letter also informed her that under the CARES Act, she was not required to make any payments during the student loan payment pause that began in March 2020, and the rehabilitation plan would begin after the pause was scheduled to expire in September 2021. However, President Biden extended the pause beyond September 2021, and the pause is expected to expire on December 31, 2022. (GE 4-5; See, Press Release, Biden-Harris Administration Announces Final Student Loan Pause Extension Through December 31 and Targeted Debt Cancellation to Smooth Transition to Repayment (August 24, 2022), <https://www.ed.gov/news/press-releases/biden-harris-administration-announces-final-student-loan-pause-extension-through-december-31-and-targeted-debt-cancellation-smooth-transition-repayment>)

Aside from the alleged student loan accounts, Applicant does not have any other delinquent accounts. She has one credit card, which does not have a balance. Her only other consumer debt is a vehicle loan, which is in good standing. According to the financial statement she provided during her June 2021 background interview, Applicant lives within her means and has \$107 in disposable income after accounting for all of her monthly expenses, which included the anticipated student loan rehabilitation payment. (GE 5)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 AG ¶ 2 describing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

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 clearance decision.

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

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 seven delinquent student loans that have been in collection since at least 2017. The following financial considerations disqualifying condition applies:

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

Seven of Applicant's student loans became delinquent after she failed to pay proper attention to the underlying details of the loans, a failure for which she has taken responsibility. The record supports her explanation that she mistakenly thought she only had two loans to pay. After learning of her mistake, she took steps to return seven delinquent loans to good standing. Applicant's efforts are not diminished because she is a beneficiary of the student loan payment pause and is not required to make any rehabilitation payments until January 2023. She has demonstrated that she can afford the projected rehabilitation payment. The following mitigating condition applies:

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Based on the record, I have no doubts 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)) The record does not contain any evidence to suggest that Applicant has an unwillingness or inability to follow the rules related to classified information. She has held a security clearance without incident since 2016. Her statements regarding her intent to comply with the student loan rehabilitation program are credible, given that she began accounting for the monthly payment as a part of her monthly budget since June 2021. The circumstances that caused her financial problems do not raise questions about her reliability, trustworthiness, or ability to properly handle or safeguard classified information. Applicant reported her error on her security clearance application, showing that she is likely to take responsibility for her mistakes and self-report derogatory 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations:	FOR APPLICANT
Subparagraph 1.a – 1.g:	For Applicant

Conclusion

Based on the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

Nichole L. Noel
Administrative Judge