



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00749
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Karen Moreno-Sayles, Esq., Department Counsel  
For Applicant: Pro se

03/06/2023

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**Decision**

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Hyams, Ross D., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 27, 2020. On June 18, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on June 30, 2021, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. The case was assigned to me on September 6, 2022.

The hearing was convened as scheduled on October 27, 2022. Department Counsel submitted Government Exhibits (GE) 1-4, which were admitted in evidence without objection. Applicant submitted Applicant's Exhibits (AE) A-D, which were admitted in evidence without objection. After the hearing, I held the record open for two weeks to provide Applicant the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as AE E-J and admitted in evidence without objection.

## Findings of Fact

In his answer, Applicant denied all of the SOR allegations with explanation. After review of the pleadings, testimony, and evidence submitted, I make the following findings of fact.

Applicant is 36 years old. He was married in 2007 and has two minor children. He took college classes from 2008-2010 and 2013-2014, and earned a bachelor's degree in 2014. He has worked for a defense contractor for about 10 years and serves as a construction supervisor. (Tr. 20-22; GE 1)

In 2011, Applicant's son was born. He reported that within two weeks of his birth, his son had a life-threatening medical emergency, and was on life-support for a month and a half. He stated that the child required intensive medical care, and his wife cared for him full time. He asserted that he was the sole provider for his family and was working as grounds maintenance. He claimed that during the 2011-2013 time period, he worked seven days a week, and worked 1000 hours of overtime a year to provide for his family. When his son was three, he had another serious medical emergency, and required more medical care. Around that time his daughter was born. His wife provided full-time care for their son until he was five years old, and was unable to return to full-time work until 2018. All of these circumstances created a financial hardship for his family. (Tr. 24-28; GE 1)

Applicant took out about \$62,000 in student loans to finance his college education. He reported that after he completed his studies, he had a six-month grace period before his loan payments were supposed to start. He stated that at the time, it was beyond his financial abilities to make student-loans payments. He did not formally apply for deferment, and his student loans went into collection status. (Tr. 24-47; GE 2)

Applicant reported that when he started working for a defense contractor in 2013, he made about \$15 an hour as a pipe fitter, and earned small salary increases yearly. He became a salaried employee in 2017 and earned about \$52,000 yearly. Applicant asserted that he has received promotions at work since that time, and now earns about \$71,000. (Tr. 24-47)

Applicant stated that in 2015, his pay was garnished for \$53 a month for his student loan debt. He claimed that the garnishment only lasted a few months, and then the garnishment ended. He reported that in 2019, his financial situation was more stable, and he contacted the lender to rehabilitate his student loans. He stated that he started by making \$5 monthly payments and after nine months of rehabilitation, the loans were no longer in a default status. He reported that in 2020, he made several \$363 loans payments, before requesting an income-based repayment plan. His payments under the new plan were \$61 monthly. Applicant made those payments through December 2021, before his loans were moved into the national Covid-19 student loan forbearance program. Applicant is scheduled to restart loan payments once the government terminates the national forbearance program. (Tr. 24-63; AE A, B, C; GE 1, 2)

The SOR (¶¶ 1.a-1.j) alleges about \$62,000 of student loans in collection. Applicant provided documentation showing that these loans were rehabilitated, and are in a current status. The estimated payoff date is in ten years. (Tr. 24-63; AE A, B, C, D; GE 3, 4 )

Applicant and his wife had credit counseling shortly after they were married. His October 2022 credit report shows that they are current on their debts. Their budget shows their finances are stable, and they can afford their monthly expenses. Their current monthly income exceeds their expenses by about \$850. (Tr. 24-28; AE D, E)

Applicant submitted four character references which state that he is an exemplary and hardworking employee, has good character, and is reliable and trustworthy. (AE F, G, H, I, J)

### **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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(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."

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**

The security concern for financial considerations is set out 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s student loans were in collection status for about five years before he began the rehabilitation program. AG ¶¶ 19(a) and (c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; and

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

Applicant contacted his lender in 2019 to rehabilitate his student loans. Once he completed that program, he established an income-based repayment plan. Applicant made loan payments under that plan until his student loans were transferred into the national Covid-19 forbearance program. Once the government terminates that program, his loan payments will resume. He provided sufficient documentation to show that his student loans are in a current status. Applicant and his family had unusual financial hardships over a seven-year period due to circumstances beyond their control, which are unlikely to recur. Once his finances were stable, he acted responsibly and made a good faith effort to address his debts. He has been working to meet his student loan obligations since 2019. Applicant is not required to show that he has paid or resolved all of his debts, or that he has done so in any particular way. He has shown that he has a reasonable plan to resolve his debts and has implemented it. These financial circumstances do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), and (d) apply.

### **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 relevant 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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful

consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered his character letters and his service working for a defense contractor. I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant's financial hardships did not arise out of irresponsible behavior. He had overwhelming family financial obligations and was simply unable to make student loan payments after earning his degree. He eventually took appropriate action to address his delinquent student loans and will continue with his repayment plan. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated the 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.j:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Applicant's eligibility for a security clearance is granted.

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Ross D. Hyams  
Administrative Judge