



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



In the matter of: )  
)  
) ISCR Case No. 22-00415  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole Smith, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2023

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant did not take responsible actions to address his financial responsibilities. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On June 26, 2020, Applicant signed a security clearance application (SCA). On March 22, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue eligibility for Applicant’s security clearance. Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

In March 2022, Applicant provided a response to the SOR with attached documentation and requested a hearing. On January 19, 2023, the case was reassigned to me. On February 24, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 8, 2023, using the Microsoft Teams video teleconference system. His hearing was held as scheduled.

During the hearing, Department Counsel offered three Government exhibits (GE) 1-3; Applicant offered two exhibits which I labeled as Applicant exhibits (AE) A and B; and all proffered exhibits were admitted into evidence without objection. I held the record open until March 15, 2023, in the event either party wanted to supplement the record with additional documentation. On March 15, 2023, I received a copy of the hearing transcript. (Tr.) On March 16, 2023, neither party had submitted supporting documentation and the record closed.

### **Findings of Fact**

In Applicant's March 2022 SOR response, he admitted all of the debts (SOR ¶¶ 1.a-1.j) and provided some attached documentation. (AE A and B) The SOR alleges ten delinquent accounts, of which nine are delinquent federal student loans. The combined total of the ten delinquent debts was \$40,036. His admissions are accepted as findings of fact.

Applicant is 52 years old. He earned a bachelor's degree in May 2015. Since July 2020, he has been employed by a federal contractor. He married in November 1997. In 2015, Applicant and his wife adopted a boy with special needs from China. He is currently 10 years old. Applicant's annual salary is approximately \$69,000, and his wife stays home taking care of their son. He has occasionally picked up extra income by delivering food to people for a food transportation service. (Tr. 14-15, 23, 32; GE 1)

### **Financial Considerations**

Applicant testified that beginning in 2015, he and his spouse began to experience financial problems after traveling to China to adopt their son. He was underemployed at the time, with an annual income of about \$40,000, and his wife, who had previously worked earning an annual income of about \$40,000, stayed home to take care of their son. Although the church provided the couple financial grants to pay for their adoption expenses, the loss of his wife's income caused them to experience financial hardship. They accumulated several debts he was unable to pay. His son also required various medical services, and these expenses were mostly out-of-pocket. Applicant has medical insurance through his employer, but his contributions to the medical providers are still very expensive. They do not receive any financial assistance from the state or federal government for the care of their disabled son. (Tr. 16-17; 26-30)

SOR ¶ 1.a alleges Applicant is indebted to a car loan creditor for an account referred for collection in the amount of \$10,465. Applicant testified at the hearing that after adopting his son, he was faced with the dilemma of either providing for his family or keeping the car he purchased in 2012. He was financially unable to take care of his family

and pay for his car too. He made the decision to have the care repossessed in 2015. The car was resold, and the outstanding amount was the deficiency balance he owed the creditor. He made an attempt to set up a payment plan, but the creditor told him that he had to pay the amount in full. (Tr. 15-18)

In approximately 2020, Applicant started working with a consumer debt relief program to assist him in repaying his delinquent creditors. He was able to resolve several medical bills, a utility bill, and two credit card accounts. His car loan creditor in SOR ¶ 1.a was not included the program because he received notice of a class action lawsuit that was filed in 2016 against the car loan creditor. In his March 2022 SOR response, he stated that this creditor would no longer seek to collect on this account and any reference of this account was removed from his credit report as a result of the lawsuit. He attached a notice of the class action settlement. The paperwork disclosed that the creditor “will no longer seek to collect a portion of any deficiency balance.” It also stated that the creditor will delete trade-line information from the three nationwide consumer reporting companies. This debt is no longer collectible. (SOR response; AE A; Tr. 19-20)

SOR ¶¶ 1.b, through 1.j allege nine student loans referred to the Department of Education (DoED) for collection in the total amount of \$29,571. Applicant testified that his student loans were deferred after his May 2015 graduation, but after the deferment expired, he was unable to make payments and his loans went into default. In his March 2022 SOR response, he stated that he had applied to the DoED loan rehabilitation program. Once his loans were rehabilitated, he would have his loans consolidated. He provided documentation from DoED dated March 18, 2022. The letter provided basic information about which loans would be eligible for consolidation, and if the applicant was approved, the new lender would take the loans out of default status. He also provided documentation dated March 18, 2022, of his monthly income and expenses, to determine whether he was eligible for the student loan rehabilitation program. (Tr. 21-22; SOR response; AE B)

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law, providing for relief measures on DoED owned federal student loans through September 30, 2020. This student loan debt relief received several extensions. In March 2020, as a result of the COVID-19 pandemic, the President directed the DoED to place federal student loans in forbearance. The federal government repeatedly extended the student loan payment pause. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collections on defaulted loans. See Federal Student Aid (FSA) website, <https://studentaid.gov/announcements-events/covid-19/>. (HE 2) On February 25, 2023, the FSA website said:

The student loan payment pause is extended until the U.S. Department of Education is permitted to implement the debt relief program or the litigation is resolved. Payments will restart 60 days later. If the debt relief program has not been implemented and the litigation has not been resolved by June 30, 2023 — payments will resume 60 days after that. We will notify borrowers before payments restart.

In August 2022, President Biden announced forgiveness of \$10,000 or \$20,000 of federal student loan debt, and on November 11, 2022, the DoED said they would continue to seek forgiveness of student loans. See “Statement from Secretary of Education Miguel Cardona on District Court Ruling on the Biden-Harris Administration Student Debt Relief Program,” <https://www.ed.gov/news/press-releases/statement-secretary-education-miguel-cardona-district-court-ruling-biden-harris-administration-student-debt-relief-program>. (HE 3)

During the hearing Applicant stated he had been accepted into the loan rehabilitation program, but then he decided against it. He said due to the CARES Act once again delaying loan payments, he decided to take advantage of not making any payments until July 2023. (Tr. 22- 23, 25)

Applicant files all of his income tax returns timely and he does not owe any delinquent taxes. He brings home a paycheck every two weeks in the amount of \$915. He estimated that his student loan payments would be around \$220 a month. He is currently unable to pay that amount with his income. After his loans come out of deferment, he stated he would be willing to work a second job in order to pay on his student loans. (Tr. 24, 30-37)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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

about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for financial problems:

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. . . . 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.

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 has a history of delinquent debts, as shown by his admissions and by credit reports in the record. AG ¶¶ 19(a) and 19(c) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable 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.

Applicant has a history of incurring delinquent debts since 2015. To his credit, he worked with a consumer debt relief service in 2020 and paid off several delinquent accounts. He did not include the car loan creditor in that program because he was a claimant in a class action lawsuit. Based on his documentation, this debt is no longer collectible; however, the bulk of Applicant's debts remain unresolved.

Applicant's nine delinquent federal student loans total \$29,571, and they are currently deferred under the CARES Act. Although his student loans are currently in a

deferment status, it is important to note that he has not made any payments to this creditor, which caused them to go in default several years before the CARES Act was enacted. He recently received notice that he was accepted into the DoED rehabilitation program, but he chose not to rehabilitate his federal student loans. He testified that he is willing to obtain a second job in order to pay his student loans once they come out of deferment. This amounts to a promise to pay a debt in the future. A promise to pay a debt is not a substitute for a steady track record of payments or other financial responsible action.

In the context of his security eligibility, I find that Applicant did not act responsibly by failing to address his delinquent student loans earlier. It is clear from the SOR response that he filled out the student loan consolidation and rehabilitation paperwork after he received the SOR. This does not demonstrate responsible or good-faith action since he only completed the DoED forms after his access to classified information was at stake.

I am unable to find that there were conditions beyond Applicant's control which contributed to his financial problems. Applicant and his wife made a choice to adopt a young boy with special needs, and his wife voluntarily gave up her job to stay with their son. Although I greatly admire their kindhearted choices, in the context of a security clearance decision, these were not conditions beyond their control. Under all of these circumstances, Applicant failed to establish that financial considerations security concerns are mitigated.

### **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 the 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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 52 years old. His wife stays at home and cares for their disabled son. He does not currently earn enough income to repay his student loans when they become

due in July 2023. Applicant testified that he had his student loans deferred after his May 2015 graduation, but after the deferment expired, he was unable to make payments and his loans went into default. He has never made a payment on his student loans.

Applicant did not provide documentation of communications with his student loan creditor once his loans became delinquent. He could have made more of an effort to have the loans consolidated, rehabilitated, placed into deferment, or loan forbearance before the CARES Act was enacted. He only took measures to address his student loans after his receipt of the SOR. His actions demonstrate a lack of fiscal responsibility and raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort toward documented resolution of his delinquent student loans, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.j:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge