



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



In the matter of: )  
)  
) ISCR Case No. 20-00968  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Mark D. Lawton, Esq., Department Counsel  
For Applicant: Sean M. Bigley, Esq.

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06/05/2023

**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 accumulated delinquent debt after a period of unemployment followed by a period of underemployment. He has demonstrated a good-faith effort to resolve his delinquent debt. He has paid four of the alleged delinquent accounts. He has also rehabilitated and consolidated his student loans and will be able to comfortably afford the monthly payment when the Covid-19 payment pause is lifted. Clearance is granted.

**Statement of the Case**

On June 19, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DCSA 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 revoke his security clearance. Applicant timely answered the SOR and requested a hearing.

On October 26, 2022, Department Counsel amended the Statement of Reasons to correct the amount owed in SOR ¶ 1.c from \$7,955 to \$226. The amendment also added SOR ¶ 1.i, alleging that Applicant is indebted to a creditor for a charged off account for \$7,955. Applicant did not object to either amendment and admitted SOR ¶ 1.i. The SOR amendment and Applicant's answer are included in the record as Hearing Exhibit (HE) I. (Tr. 13-14)

At the hearing, convened on December 8, 2022, I included in the record as HE II, the disclosure letter Department Counsel sent to Applicant on February 22, 2022. I also included as HE III through HE VI, four articles related to student loans. I admitted Government's Exhibit (GE) 1 through 5, and Applicant's Exhibit (AE) A through J, without objection. After the hearing, Applicant submitted AE K, which is admitted without objection. The email indicating that Government did not object to the post-hearing submission is included in the record as HE VII. DOHA received the transcript (Tr.) on December 16, 2022.

### **Findings of Fact**

Applicant, 29, has worked for his current employer, a federal contracting company since April 2019 as an engineer. He completed a security clearance application, his first, in June 2019. He disclosed three delinquent accounts totaling over \$12,000. He also disclosed a civil court action filed against him by a creditor. He also provided information about his student loans. The SOR alleges that Applicant is indebted to five creditors for \$63,260, including eight student loan accounts totaling \$41,86 . He admits the allegations. (GE 1, 3, 5)

Applicant attended a private university in State 1 for his undergraduate studies between August 2010 and May 2015. He financed his education with student loans. After graduating, he began a job with a local company as a contractor. When he accepted employment, the company assured him that they had plenty of work for him. Between May and December 2015, he worked between 35 and 45 hours per week, earning \$15 per hour. He was able to support himself, live within his means, and save money. (GE 1; Tr. 30-31, 51)

In January 2016, the work stopped. Applicant actively tried to find other work but was unsuccessful. He was underqualified for jobs in his field and told that he was overqualified for other entry level positions outside the engineering field. In April 2016, he accepted a position as a substitute teacher in the local school system. However, it took several months to complete the required administrative process; as a result, he could not accept assignments until following school year. Applicant exhausted his savings. His only income came from his job as a delivery driver for a sandwich shop. He

earned \$7.25 per hour and between \$20 and \$50 in tips each shift. He used the credit card alleged in SOR ¶ 1.1 (\$7,955) to pay his expenses. When Applicant began substitute teaching, he stopped using the credit and adjusted his living expenses to fit his income. However, he did not earn enough money to pay his past due accounts. (Tr. 31-32, 52-55)

In June 2017, Applicant secured a job in the engineering field earning \$15 per hour. When he left the position in April 2019, he was earning \$18 per hour. During the two years of this employment, he began to rehabilitate his finances, and rebuild his savings. After paying his expenses, he had \$484 of disposable income each month. (Tr. 55-56)

In April 2019, Applicant resolved one of the debts he disclosed on his June 2019 security clearance application, \$3,036 for unpaid rent. He also paid the amount past-due on his car loan, and paid off the car in full in May 2020. The debts alleged in SOR ¶¶ 1.a (\$93), 1.b (\$97), and 1.c (\$226) are for utility bills from State 1. Applicant believes he incurred the debts when he moved and forgot to close the accounts. He resolved the three accounts in November 2022. The creditor charged off the account alleged in SOR ¶ 1.1 (\$7,955) in March 2016. He attempted to negotiate a settlement plan with the creditor to avail. He settled the account for \$3,062 in December 2022. (Tr. 29-32, 42-43; AE E-H,K)

Applicant's student loans became delinquent while he was unemployed. He attempted to rehabilitate the loans in July 2018 and thought they had been returned to good standing. He did not learn the loans were delinquent until he received the SOR in June 2020. In June 2021, he contacted the loan servicer to rehabilitate the loans and consolidated the eight loans into one. The loans are currently in administrative forbearance under the Covid-19 payment pause. He elected to not make payments during the payment pause so that he could continue to rebuild his savings. As of the hearing, he had \$6,000 in savings and \$4,000 in his checking account. The consolidated student loan payment is \$357 per month, which Applicant can comfortably afford. He has arranged to have the payments automatically withdrawn from his bank account. (Tr. 35-37, 44-48; GE 1; AE G, I-J)

Applicant began his current job in April 2019, with a \$50,000 annual salary. In January 2021, he received a raise to \$72,000. He currently has \$1,500 in disposable income each month. (Tr. 21-29, 56-58; AE B)

### **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**

The SOR alleges disqualifying conduct under the financial considerations guideline. Applicant's admissions as well as the documents in the record support the Government's *prima facie* case.

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. (AG ¶ 18). Applicant admits to owing \$63,260 to five creditors. The debts include three utility accounts SOR ¶¶ 1.a – 1.c, one charged of credit card

debt, SOR ¶ 1.i, and eight defaulted student loans, SOR ¶¶ (1.d – 1.k ). He incurred the debt between January and September 2017. The record supports the application of the following financial considerations disqualifying conditions:

AG ¶ 19(a) inability to satisfy debts; and

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

The record also supports the application of the following mitigating conditions:

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of unemployment, 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,

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

Applicant incurred delinquent debt during a nine-month period of unemployment and underemployment. He did not engage in financially reckless or irresponsible behavior. Applicant, then a recent college graduate, went from working as a full-time engineer to working part-time as a delivery driver for a sandwich shop for a fraction of the pay. Though he could not afford to repay his creditors when he secured a position that provided more income, he stopped using the credit card and adjusted his expenses to fit within his means. When he returned to full-time employment in his field, he began to address his delinquent accounts, paying past-due rent and returning his car loan to current status. He then began addressing the SOR debts, paying off SOR ¶¶ 1.a through 1.c and settling SOR ¶ 1.i.

As for Applicant's student loans, they are currently in administrative forbearance under the Covid-19 payment pause issued by President Bident in March 2020. The loans are now in good standing. Over the course of the payment pause, he has saved \$6,000 as a cushion. He has also consolidated the loans into one account with one payment that he can comfortably afford on his current income.

Based on the record, I have no doubts regarding Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Security clearance adjudications are not debt collection proceedings. Rather the purpose of the adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." (AG ¶ 2(a)) Applicant's financial problems were related to a long period of unemployment followed by months of underemployment. He has demonstrated financial rehabilitation. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.l: For Applicant

## **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the national interest to grant Applicant a security clearance. Applicant's eligibility for access to classified information is granted.

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Nichole L. Noel  
Administrative Judge