



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



In the matter of:)	
)	
)	ISCR Case No. 22-00797
)	
Applicant for Security Clearance)	

Appearances

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

09/22/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant’s recent efforts to address his delinquent federal student loan debt are insufficient to mitigate security concerns under Guideline F (financial considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 18, 2021. On May 17, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on May 23, 2022, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case

was assigned to me on June 1, 2023. On June 22, 2023, DOHA issued a notice scheduling the hearing for August 2, 2023, via video teleconference through an online platform.

The hearing convened as scheduled. Department Counsel offered Government Exhibits (GE) 1 and 2, both of which were admitted without objection. Applicant testified but did not offer any exhibits. I held the post-hearing record open until September 5, 2023, to allow him the opportunity to do so. On August 29, 2023, Applicant submitted an e-mail (Applicant's Exhibit (AE) A) and two documents. (AE B, AE C) They are all admitted without objection. He did not submit any further evidence. DOHA received the hearing transcript (Tr.) on August 14, 2023, and the record closed on September 5, 2023.

Findings of Fact

Applicant admitted both delinquent student loan accounts (SOR ¶¶ 1.a and 1.b) without further comment. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 45 years old. He has never married and has no children. He earned an associate degree in 2001. He has been taking college courses towards earning an information technology (IT) certification since December 2022. He has worked in engineering for a defense contractor, with a security clearance, since March 2016. (Tr. 10, 16, 21, 35)

The SOR alleges two federal student loans owed to the Department of Education (¶ 1.a, for \$18,001 and ¶ 1.b, for \$11,864), totaling \$29,865. Applicant admitted both debts in his Answer, and they are also established by his March 2022 credit report (GE 2).

Applicant used these two student loans to finance his associate degree. The original amount of the loans totaled about \$25,000-26,000. The loans were reported in collection status in early 2019. (GE 2; Tr. 23) He did not disclose any delinquent debts on his February 2021 SCA. (GE 1)

Applicant attributed his delay in repaying the loans to periods of underemployment and unemployment in the years after he earned his degree. He was not able to find stable employment until 2010. He worked for a medical company from 2010 to 2014. In 2014, he relocated to his current home state. He worked in the real estate sector from 2014 until 2016, when he joined the defense industry and secured his current employment. (GE 1; Tr. 24-27)

Applicant secured deferments of his loan payments twice. He said he has never been on a repayment plan for his student loans. He acknowledged that there were several years where he took no action towards his loans. He admitted that he should have taken care of them many years ago and is "embarrassed about it" now. (Tr. 28-29, 37)

Applicant acknowledged that when he started with his employer in 2016, he was contacted and asked to begin repayments on his student loans. He requested a

forbearance, because “every time was kind of not the best time” to begin repayments. (Tr. 39-40) He maintained that he did not have sufficient funds to address his student loans until he was hired by his current employer. His starting annual salary with his current employer was about \$13,000 or 14,000. Since then, his salary has steadily increased, and he now earns an annual salary of \$63,800. (Tr. 23-27)

Applicant knew that delinquent debts were an issue for getting a clearance because of the potential for “compromise.” His expenses have increased since he resumed taking classes in December 2022. He is financing his current courses “out of pocket” and through a tuition reimbursement employee benefit. He anticipates that he will pay about \$14,000 to \$16,000 “out of pocket.” The record did not indicate the amount he has paid to date. (Tr. 29-30, 47-48)

Applicant has not been contacted by the U.S. Department of Education (USDOE) about resuming his student loan payments after the post-COVID-19 forbearance program ends this fall. (Tr. 29, 37-41) He knows that his past-due student loans are a “roadblock” to furthering his education, but he has been concerned about beginning a payment plan and then falling behind. (Tr. 32-34, 45-47, 49-50) There is no indication in the record that he ever contacted the USDOE to attempt even an income-based repayment plan.

At the hearing, Applicant detailed his plan to resolve the student loan debt. He intends to pay off his student loans in full by using the equity from his home. A few weeks before the hearing, he applied to refinance his mortgage. He believes he currently owes just under \$30,000 in student loans. He plans to take the equity from the mortgage refinancing and make one lump-sum payment to resolve the loan in full. He expects that his monthly mortgage payment will increase from \$900 to \$1,300, which he said he has sufficient savings to address. However, the true impact on his monthly finances is unclear, since it is too soon to tell without more information. (Tr. 29-34, 46-50)

Applicant does not maintain a written budget, but he is current with all of his bills, and is able to detail his monthly expenses. He has no other delinquent debts. He has never had a security violation. He would never do anything to compromise himself because he “wouldn’t say anything about what I do or how I do it.” He has no past-due taxes or tax returns. (Tr. 35-36, 42-44, 48-52)

After the hearing, Applicant provided an update regarding his progress in resolving his student loan debt. An August 4, 2023 Department of Education statement reflected his total loan balance of \$29,866 (\$29,042 in principal and \$823 in interest). (AE B) His mortgage refinance was conditionally approved at some point after the hearing, but final closing was pending. (AE C) He indicated that he had reduced his 401(k) contributions. He said he has been “scared straight.” (AE A)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security

determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

The AGs 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

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. Affluence that cannot be explained by known sources of income is also a

security concern insofar as it may result from criminal activity, including espionage.

The guideline provides several conditions that could raise security concerns under AG ¶ 19. The following AGs are potentially applicable:

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

Applicant federal student loans became delinquent in about 2019 before they were placed in forbearance during the COVID-19 pandemic. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate 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, or 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 incurred federal student loans to finance the associate degree that he earned in 2001. He had some employment instability for several years thereafter and began working for his current employer in 2016 at a low salary. These circumstances impacted his ability and willingness to repay his student loans. He deferred payments several times but has never been on a repayment plan for his student loans, even one based on his income. He did not initiate efforts to repay his loans until shortly before his hearing. His plan to resolve the loans by refinancing his mortgage is not unreasonable. However, since his loans have been in existence for more than 20 years, his current plan, even if put into effect, comes too late to show responsible action.

Applicant's student loans remain unresolved and unaddressed. The COVID-19 forbearance program does not excuse his earlier years of inaction. ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021); ISCR Case No. 20-02219 at 3 (App. Bd. Oct. 28, 2021). It is not required that Applicant pay all of his student loan debts at once, or in any particular way. What is needed is a reasonable plan, and steps taken towards putting that plan into effect, such as with a track record of steady payments towards the debt. Applicant has not done this. None of the above mitigating conditions apply to mitigate the

security concerns shown by Applicant's delinquent student loans and his failure to address them responsibly.

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(c):

- (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 have incorporated my comments under Guideline F in my whole-person analysis. Applicant's recent efforts to address his delinquent student loans on the eve of his hearing is not enough to show good faith, particularly when balanced against many years of inaction. He did not provide sufficient evidence to mitigate the financial security concerns. This is not to say he cannot apply for a clearance again in the future when he has a track record of financial responsibility towards his debts. But at this time, he has not met his burden of mitigating the security concern shown by his past-due student loans. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

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
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Subparagraphs 1.a-1.b:	Against Applicant
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Conclusion

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

Braden M. Murphy
Administrative Judge