



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



In the matter of: )  
)  
) ISCR Case No. 22-01658  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2023

**Decision**

OLMOS, Bryan J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 8, 2021. On September 23, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD 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 the Security Executive Agent Directive 4 (SEAD 4), National Security Adjudicative Guidelines (AG), effective June 8, 2017.

Applicant answered the SOR on October 11, 2022, and provided a document in support. He elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. On October 31,

2022, Department Counsel submitted the Government's File of Relevant Material (FORM), including Government's Exhibits (GX) 1 through 11. Applicant received the FORM on November 11, 2022, and did not provide a response.

The case was assigned to me on July 24, 2023. The SOR and the Answer (GX 1-2) are the pleadings in the case. GX 3 through GX 11 are admitted without objection.

### **Findings of Fact**

Applicant is 44 years old, married and has two adult children. From October 2002 through June 2004, he attended college and earned an associate degree. He has lived at his current residence since 2005. He started with his current employer in April 2008 and is a technician. (GX 3, 10-11)

The SOR alleges 15 delinquent federal student loans totaling \$44,672 (SOR ¶¶ 1.a-1.o) and one delinquent medical account totaling \$469 (SOR ¶ 1.p). Applicant admitted SOR ¶¶ 1.a-1.o and denied SOR ¶ 1.p with explanations. In addition to Applicant's admissions, the debts are established by Applicant's April 2017, March 2021 and June 2022 credit reports. (GX 1-2, 6-8)

Applicant explained that he took out student loans to fund his college education from 2002 through 2004. The loans came out of deferment in late 2004, but he could not afford to make the minimum payment of \$900 each month. He stated that from late 2004 through early 2017, he made no payment on his student loans. (GX 2-4, 10-11)

Applicant stated that, during this time, he made multiple attempts to complete a repayment plan through the Department of Education (DOE) website. On each occasion, the website calculated a monthly repayment that was 2.5 times greater than his mortgage. He stated he then called DOE on three separate occasions and requested that a repayment application be mailed to him. However, he claimed he never received the paperwork. He did not provide further detail as to the proposed payment plans, what dates he contacted DOE or what additional efforts he undertook to resolve these delinquent accounts prior to 2017. (GX 2-4, 10-11)

In May 2017, DOE issued a wage garnishment order to Applicant's employer and listed the amount due as \$71,861. Applicant's April 2017 credit report reflected a delinquent student loan balance of about \$57,319. The record is unclear as to the reasons for the balance difference. At the time, Applicant's annual salary was about \$53,000, paid bi-weekly. The involuntary wage garnishment was calculated at \$211 per pay period, beginning in June 2017. (GX 4, 9)

Once the garnishment was initiated, Applicant took no action to establish a payment plan with DOE or otherwise bring his loans into good standing. He stated he chose to allow the garnishment to continue as a way to repay the debt and not cause financial burden to his family since it was a payment he could afford. (GX 2-4, 11)

Applicant stated that, from June 2017 through early 2020, wage garnishments continued pursuant to the order. A comparison of Applicant's credit reports reflects that his delinquent student loan balance decreased from \$57,319 to \$44,672 during this time. (GX 2, 8-9, 11)

In about March 2020, the wage garnishment was suspended as part of COVID-19 relief efforts. Applicant's April 2022 earnings statement does not show payments toward the garnishment. In his May 2022 Response to Interrogatories, Applicant stated that the garnishment remained suspended and he had not issued any other payment on his student loans. He anticipated that the garnishment would renew once the COVID-19 relief efforts terminated. (GX 2, 4)

In his October 2022 Answer to the SOR, Applicant did not specify whether any additional payments had occurred on the student loans since the garnishment was suspended and he did not provide any detailed history of payments. However, he restated that he will allow the garnishment to proceed in order to repay the debt in a way that does not cause a financial burden. (GX 2)

With regard to the delinquent medical debt (SOR ¶ 1.p), Applicant did not disclose the debt in his February 2021 SCA or recognize it during his March 2021 security clearance background interview. However, with his Answer, he provided a statement from the collection agency showing that the debt had been paid in full shortly after his interview. (GX 2)

Outside of the accounts alleged in the SOR, Applicant has no additional delinquent debts. An April 2022 earnings statement shows that he had an annual salary of about \$75,000. In May 2022, he submitted a budget that confirmed his salary and reflected that, after paying his monthly obligations, he maintained a net remainder of about \$1,800 per month. That budget did not include any payment toward his student loans. (GX 4, 8)

Applicant stated that his intent was to take care of all of his financial issues responsibility. He further stated that he was able to live within his means and described his financial situation as "great." (GX 2, 11)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988).

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 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 relating to the guideline 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 financial security concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The adjudicative guideline notes three conditions that could raise security concerns under AG ¶ 19 and are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the evidence reflect that, from late 2004 through early 2017, he issued no payments toward his delinquent student loans. He described an inability to pay on his student loans in 2004 because of financial difficulties. However, even after securing his current employment in 2008, he continued to take no substantive action to bring his student loans into good standing. Evidence reflects that the student loans remain in collection status with involuntarily payments only occurring after the issuance of a wage garnishment order in 2017. He also has an additional account in collection status. All of the above disqualifying conditions apply.

Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15.

There are three pertinent conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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's student loans came out of deferment in late 2004. He claimed he did not initially pay on his student loans because he could not afford the payment. While it is possible that he struggled financially while initially entering the workforce, he did not explain how those possible struggles prevented him from making any payments on his loans over the next thirteen years. Instead, outside of a few unspecified efforts to establish a payment plan, he took no action on his student loans until forced to do so by the wage garnishment order in 2017.

Following the 2017 garnishment, Applicant took no action to bring his student loans into good standing. About three years later, following the COVID-19 suspension of the garnishment, he again took no action to further address his student loans. Instead, he is content to allow the garnishment to eventually resume.

It is noted that, since the garnishment was initiated in 2017, Applicant's balance on the loans has decreased by about \$12,650. However, when considering the security concerns under Guideline F, even when delinquent debts are being paid, the administrative judge must evaluate the totality of the evidence and consider the circumstances of the underlying debts for what they may reveal about an applicant's judgment and reliability. ISCR Case No. 15-03019 at 3 (App. Bd. July 5, 2017) Satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor. ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009). Court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than means initiated and carried through by the debtor himself. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019) Similarly, the fact that an applicant's student loans are in a deferment status does not excuse an applicant's past inactions in the context of security clearance eligibility. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021)

None of the AG ¶ 20 mitigating conditions are fully applicable to SOR ¶¶ 1.a - 1.o. Applicant's delinquent federal student loans are long-standing, ongoing, and cast doubt on his current reliability, trustworthiness, and good judgment. It took Applicant nearly thirteen years to begin issuing payments on his delinquent student loans, and he only did so through an involuntary garnishment. While the balance of the delinquent student loan debt has reduced through payments under the garnishment,

those payments alone do not establish good-faith effort, especially when compared to the years of inaction that occurred before and since the garnishment was ordered. The COVID-19 suspension of the garnishment was a condition beyond his control. However, both before and after the suspension, he has not provided sufficient evidence that he acted responsibly under the circumstances.

AG ¶¶ 20(a), and 20(d) are applicable to SOR ¶ 1.p. Applicant learned of this delinquent medical account during his security clearance background interview. That same month he took action to resolve the debt through payment.

Through garnishment, Applicant's student loan debt has decreased. However, the debt reduction alone does not fully mitigate the ongoing financial security concerns.

### **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 have incorporated my comments under Guideline F in my whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

For nearly twenty years, the only documented action taken to resolve Applicant's delinquent student loans has been the DOE issuance of a wage garnishment order in 2017. Although his student loan balance has decreased through involuntary garnishment payments, Applicant's actions, to date, are insufficient to establish good-faith, responsible efforts to resolve his delinquent federal loan debt. 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
Subparagraphs 1.a-1.o:	Against Applicant
Subparagraph 1.p:	For Applicant

**Conclusion**

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

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Bryan J. Olmos  
Administrative Judge