



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00147
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jenny Bayer, Esq., Department Counsel  
For Applicant: *Pro se*

09/21/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant refuted the security concerns under Guideline E, personal conduct, but failed to mitigate the Guideline F, financial considerations, security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 20, 2021, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on August 19, 2022, and requested a hearing before an administrative judge. The case was assigned to me on July 3, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 24, 2023,

scheduling the hearing by Microsoft Teams for August 23, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 7. There were no objections, and they were admitted in evidence. Applicant testified and did not offer any exhibits at his hearing. Post-hearing, he submitted a document that was marked Applicant Exhibit (AE) A. There was no objection, and it was admitted in evidence and the record closed. DOHA received the hearing transcript on September 12, 2023.

### **Findings of Fact**

Applicant admitted all the SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He earned an associate degree in 2014 and a bachelor's degree in 2016. He has never married and has no children. After graduating college, he worked part-time until he found full-time employment in October 2017. His annual salary was about \$30,000 to \$34,000. In February 2019, he began working for his present employer and earns about \$54,000 annually. He also works a part-time job five days a week, three hours a day, earning \$13.00 an hour. (Tr. 16-20; GE 1, 2)

Applicant completed a security clearance application (SCA) in 2018 and another in January 2021. He did not disclose any delinquent debts or loans on his 2021 SCA. He was interviewed by a government investigator in February 2021. He did not voluntarily disclose he had delinquent student loans until confronted with them by the investigator. He told the investigator that he was unaware they were in collection. He said he would contact the creditor and make payment arrangements. (GE 1, 2)

Applicant credibly testified that when he completed the SCA he believed that the financial section that inquired about delinquent debts was referring to mortgages, car loans, and other consumer debts. He did not associate his student loan as being in the same category. He did not ask for assistance or clarification about the questions being asked. He testified that he did not intentionally fail to disclose the student loans and other debt alleged in the SOR in his SCA. (Tr. 21-26)

Applicant financed his education with student loans and grants. He testified that he did not remember how he received his student loans, because he was playing a sport at college, but confirmed the loans were used to pay for college. He was confused about how he obtained the loans. The student loans are alleged in SOR ¶¶ 1.a through 1.j and total approximately \$55,904. He testified that he contacted the creditor in about 2017 about repaying the loans. The creditor advised him to pay \$128 a month. Applicant could not afford to pay that amount at the time. He did not contact the creditor again. Applicant's student loans are now deferred due to the pandemic. (Tr. 21-26, 40-59; GE 3-7)

Applicant made one payment of \$128 in approximately May 2019. He could not recall why he made that payment but assumed it was because he had some extra money. He testified that he looked at his Credit Karma statement and the student loan accounts

were reported as closed. He believed because they were closed, he was no longer responsible for paying them and did not need to disclose them on his SCA. He further testified that after he received the SOR, he believed that at his hearing he would be provided financial guidance in formulating a payment plan to resolve his delinquent student loans. He said he never thought to contact the creditor to make a payment arrangement after his initial inquiry or to inquire about the status of the loans. He never thought to ask his facility security officer or anyone else for help in understanding how to resolve the issues raised. He said he did not understand that his student loans were considered debts. (Tr. 21-29, 44-59)

The SOR alleges a small debt (¶ 1.k - \$48) that Applicant said he was unaware of. He has not contacted the creditor or made attempts to resolve this debt. Again, he believed he would be provided financial guidance at his hearing on how to resolve the financial issues raised. (Tr. 28-29, 53; GE 3-7)

Applicant testified that he pays his bills on time. Six months ago, he started a budget to keep track of his expenses and payments. He has about \$30 in his bank account. He estimated that he spends about \$300-\$400 on non-essential expenses, such as restaurants, dates, and playing golf about once a month (\$60 green fees). He has not received any financial counseling. After the record closed, Applicant provided a receipt to show he made a payment of \$150 toward his student loan. (Tr. 30-40, 59-61; AE A)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

The SOR alleges Applicant deliberately failed to disclose his delinquent student loans and another debt. I believe he was aware he had student loans, and he had not paid them, but he did not think he had to disclose them on his SCA. He believed the debts that were required to be reported were mortgages, car loans, and other consumer debts. Applicant's naivety was apparent throughout his hearing. I found him credible. I do not believe he deliberately failed to disclose his delinquent student loans. I believe he was unaware of the other debt alleged in the SOR. The above disqualifying condition does not apply. I Applicant refuted the personal conduct allegation.

## **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. 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.

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

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

Applicant graduated from college in 2016. He financed his education with student loans. He made one payment before receiving the SOR and another post-hearing. He has not contacted the creditor to resolve the loans or debt and does not have a plan on how he will resolve them. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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 testified that he was unable to make the proposed payment amount provided by the creditor for his student loans. He assumed because Credit Karma indicated the loan accounts were closed that he no longer had to pay them. He did not contact the creditor to verify the status of the accounts or seek guidance on their status. Applicant certainly became aware after his background interview and receipt of the SOR that his student loans were a security concern. He made one pre-hearing payment and another post-hearing payment. He did not take any other action to address them or the other small debt alleged in the SOR. For some reason, he thought the security clearance hearing process would assist him with guidance on how to resolve his financial difficulties. He has not had financial counseling. None of the mitigating conditions 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 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), 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 E and Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

It was clear Applicant was overwhelmed by his responsibility for repaying his student loans. Although he was naive in believing he would be provided financial guidance at his hearing, he had contacted the creditor earlier to make a payment plan even though he could not afford it. His belief that, because the accounts were closed, he no longer owed the debts raises concerns about his judgment. Equally concerning is that he did not take the initiative to inquire and learn what his current obligations were to repay his loans. His conduct raises questions about his ability to protect classified information. He has not met his burden of persuasion. The record evidence leaves me with serious questions and doubts as to his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. The security concerns under Guideline E, personal conduct were refuted.

### **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.l:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a-2.b:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge