



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



In the matter of:	)	
	)	
[REDACTED]	)	ISCR Case No. 22-00336
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

05/16/2023

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**Decision**

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HESS, Stephanie C., Administrative Judge:

Applicant’s past financial difficulties were due to circumstances beyond his control, are unlikely to recur, and do not cast doubt on her current reliability, trustworthiness, or judgment. Applicant worked with her creditors and has resolved or is currently resolving the majority of her delinquent accounts. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (e-QIP) on February 11, 2020. On April 1, 2022, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Ex. 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 adjudicative guidelines (AG) effective June 8, 2017.

Applicant submitted his Answer to the SOR, with evidentiary attachments, and requested a hearing before an administrative judge from the Defense Office of Hearings

and Appeals (DOHA). Department Counsel was ready to proceed on August 30, 2022, and the case was assigned to me on March 29, 2023. On April 7, 2023, DOHA notified Applicant that the hearing was scheduled for April 25, 2023. I convened the hearing as scheduled via Microsoft Teams video-conference. Government Exhibits (GX) 1 through 6 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through K were admitted without objection. DOHA received the transcript (Tr.) on October 20, 2022.

### **Procedural Issue**

At the start of the hearing, Department Counsel moved to amend the SOR allegations by striking SOR ¶¶ 1.w and 1.x. Applicant did not object and I granted Department Counsel's motion to amend.

Prior to the hearing, Applicant submitted a list of character witness who we intended to have testified during the hearing. He also provided character letters from the people listed on the witness list. After Applicant, Department Counsel, and I discussed the necessity of calling the witnesses who had already provided statements, Applicant determined that it was not necessary to call the witnesses who were waiting outside the courtroom. Applicant informed them it was not necessary for them to testify, and they left.

### **Findings of Fact**

Applicant, 49, is a systems administrator currently employed by a federal contractor since September 2013. He received an associate's degree in February 2012, a bachelor's degree in May 2013, and a master's degree in May 2015. He cohabitated with his fiancée from September 2005 until May 2020, when their relationship ended and Applicant moved out. He has three, ages 19, 17, and 12. He currently holds a security clearance. (GX 1; Tr. 32-36.)

The SOR, as amended, alleges 24 delinquent accounts totaling \$120,663. The debts are comprised of 13 delinquent student-loan accounts totaling \$106,636 and 9 delinquent credit-card accounts totaling \$14,027. In his answer to the SOR, Applicant admits each of the debts and provides an explanation regarding the circumstances surrounding his financial delinquencies. He listed his total delinquent student loan debt on his February 2020 e-QIP. The delinquent debts are reflected in Applicant's credit-bureau reports (CBR) and Applicant discussed them with the investigator during his May 2020 personal subject interview (PSI). (GX 1 through GX 6.) Applicant's admissions are incorporated in my findings of fact.

Applicant worked at a company's manufacturing facility from 2005 until the company outsourced its manufacturing and closed the facility in 2010. He was unemployed from 2010 until April 2012. While unemployed, he concluded that his career was going nowhere and decided to get a college degree. After earning his associate's degree, Applicant worked for a software company as a support technician from April 2012

until August 2013. During that time, he earned his bachelor's degree and in September 2013 started working in his current position. (AX A; GX 1.)

From 2010 until 2015, Applicant attended a university from which he received all three of his degrees. The university offered in-person and online classes. Applicant met with a recruiter at the university who advised him that the payment of the student loans that he was incurring would be an easy and affordable repayment process. At the time that he borrowed the money to fund his higher education, and after completing his course of studies in 2015, Applicant did not have a firm understanding of the student-loan repayment process. (AX A; GX 2; Tr.????)

It is relevant to note that the practices of the university Applicant attended have been challenged in multiple lawsuits to include several class actions. Recently, the university was part of a class-action lawsuit that claimed the listed schools defrauded their students through misrepresentations and actions that constituted predatory lending practices. The class is comprised of students/former students with federal student loans used to attend any of the listed schools who filed or are eligible to file a borrower defense application to oppose repayment of their student loans. The class-action settlement received final approval on November 16, 2022. <https://studentaid.gov>

Approximately six months after graduation, Applicant received his first repayment notice he was stunned by the approximately \$1,400 monthly payment. This amount was approximately one half of his monthly income and was not affordable for him. He contacted the Department of Education (DOE), which was the creditor of his loan, and attempted to work out an affordable repayment agreement. The DOD representative was stated that Applicant was required to pay the full monthly payment. Unable to do so, he defaulted student-loan repayments. (AX A; GX 2; Tr.????)

In April 2017, DOE began garnishing Applicant's wages in the approximate amount of \$260 to \$285 every two weeks. DOE also seized Applicant's federal and state tax refunds. Although he was frustrated by the fact that the total monthly payment through the garnishment was affordable to him and something to which he would have agreed to given the opportunity, he was, nonetheless relieved that the loans were in repayment. Inquiry into a loan with habilitation program the information he read stated that he needed to make eight consecutive payments to the loan, but he was unable to ascertain whether or not the garnishment payments would also continue, thus creating a scenario where he was making a double monthly payment which was not something he was able to afford. The garnishment remained in place until the March 13, 2020, COVID-19 payment pause. See <https://studentaid.gov> Applicant's payments total between \$16,000 and \$17,000. (AX A; GX 2; GX 1.) The student-loan debts are alleged in SOR ¶¶ 1.a through 1.k, 1.n, and 1.q.

In approximately 2018, in an effort to appease his fiancée, Applicant began using his credit cards more frequently for more extravagant entertainment and purchases than was his general practice. At the time, Applicant's fiancée was contributing to the payments on the credit cards. By late 2018/early 2019, Applicant had financially overextended

himself with his credit card usage and was unable to make the required monthly payments on several accounts. He was also in a car accident during this period and was responsible for his deductible, which created additional financial strain. The delinquent credit-card accounts are alleged in SOR ¶¶ 1.l, 1.m, 1.o, 1.p, and 1.r through 1.v. (GX 2; AX A.)

In May 2020, Applicant's fiancée terminated their relationship and Applicant moved out. He rented a small two-bedroom apartment which he had to furnish in its entirety. His then 16-year-old daughter moved in with him full time and his son, then 9, lived with him half of the time. Applicant was responsible for the increased living expenses necessarily incurred by his children, as well as school-related items such as clothing, backpacks, supplies, etc. (AX A; Tr.????)

In spring 2020, Applicant began consulting with several friends, including his direct supervisor, about managing personal finances, including strategies for paying off debt. Based on the advice he received, he structured a plan for resolving his debts. He realized that he needed an overall better understanding of how credit worked, so he subscribed to a free credit-monitoring program through which he began to study how credit worked and closely monitor his credit. (AX A; Tr.???)

In approximately May 2020, in accordance with his plan, Applicant determined that he needed to restructure his car-loan debts because he was paying very high interest on his two car loans. He made two withdrawals from his 401(k), each withdrawal was for the exact amount of the payoff on each of the two car loans and paid the car loans off. He also contacted DOE to make arrangements to enter a student-loan rehabilitation agreement. He then contacted all of the creditors of his delinquent accounts that he was able to identify from the list available through his credit-monitoring company. (AX A; Tr.???)

In May 2022, Applicant received a letter from DOE stating that he had successively rehabilitated his student loans, that the loans were now in good standing, and that they had been transferred to a loan servicer. The loan servicer consolidated Applicant's 13 loans into a single account with a monthly payment of \$223. However, due to the payment pause, Applicant's monthly payments are not scheduled to begin until August 31, 2023. In accordance with his repayment agreement, the loan-servicer will annually review Applicant's salary to determine the amount of the monthly payments based on his income. SOR ¶¶ 1.a through 1.k, 1.n, and 1.q, totaling \$106,636, are in good standing. (AX B; AX C; AX D; Tr.???)

In September 2022, Applicant settled the \$661 credit-card debt alleged in SOR ¶ 1.u. In December 20, he settled the \$1,186 credit-card debt alleged in SOR ¶ 1.s. (AX H; AX G.) He contacted the creditor of the credit-card debts alleged in SOR ¶¶ 1.l (\$3,263), 1.m (\$2,459), and 1.p (\$1,639) and attempted to consolidate the three debts and make one monthly payment, but the creditor would not permit this. Applicant created an account for each of these debts at the creditor's website where he will make payments as he is able. (AX A; Tr.???)

The debts alleged in SOR ¶¶ 1.o, 1.r, 1.t, and 1.v are not listed on the reports generated by the credit-monitoring company that Applicant uses. The accounts are charged off and he stated that they have been sold to collection agencies that he has not been able to locate. Department Counsel suggested that Applicant use the contact information and the account numbers from the original creditors listed on the December 2021 CBR to try to track down contact information for the collection agencies. Applicant agreed that this was an approach that he would try. (AX A; Tr.????)

Since 2013, when he started working for his current employer, Applicant always received a state tax refund until tax year 2021. He did not alter his withholding status and was surprised to learn that he owed approximately \$1,800 in state taxes for 2021. He satisfied the tax debt through a monthly-payment plan. (Tr.????)

In order to avoid owing state taxes for tax year 2022, Applicant used several online tax calculators to ensure that he was withholding the proper amount. Despite the confirming information that he received from using the online calculators, Applicant owed state taxes for 2022 in the amount of \$1,300. He contacted the state treasurer to make payment arrangements prior to April 18, the due date, but was informed that he would have to wait until after the due date for an official statement from the treasurer regarding the amount that he owes. The treasurer stated that official notices will be sent out between one week and one month after the due date. Once Applicant receives the official notice, he will be able to make payment arrangements. He is awaiting the terms of the repayment before he obligates himself to repayment of his remaining credit-card debts. In order to prevent future state-tax liability, he is having an additional \$60 a paycheck deducted for his state taxes. (AX A; Tr.???)

Applicant contributes \$200 a month to his son's mother for his son's support as well as providing for the purchase of necessary items such as clothing and school supplies. Applicant drives approximately 180 miles per day to go to and from work. He retains ownership of his two older vehicles to ensure that at least one of them is mechanically sound enough to make the daily round trip. Because of the age of the vehicles and the high usage of them, he routinely has maintenance costs and recently spent approximately \$500 for new tires on one of his vehicles.

On the advice she received in credit counseling, Applicant has been working to reestablish her credit. She has opened new credit-card accounts with six of the creditors of the SOR debts. She was advised to maintain small balances on several accounts long enough for the accounts to be reported, then pay the balance of the accounts. Additionally, Applicant stated that there are several circumstances, such as travel and car rental, where a credit card is required. (Tr. 77-81.)

Since beginning her current job, Applicant has maintained a written budget. She bought her house in 2014 and her October 2022 CBR shows her mortgage-loan payment history beginning in May 2015. She has never made a late payment. She refinanced her house in June 2021 at a considerably lower interest rate. Applicant uses an application on her cell phone to monitor her accounts and her credit score. The application also provides credit-management tips. Applicant is current on her ongoing financial obligations and has not incurred any recent delinquent debt. She has a checking account, savings account, and makes contributions to a 401(k). She has a net monthly remainder. (AX J; Tr. 49-50; Tr. 82.)

Applicant submitted five character-reference letters written by the people who were waiting to testify during the hearing. Coworker and friend for more than ten years and considers Applicant to be reliable, trustworthy, and dedicated. Applicant's coworker and friend since 2015 considers Applicant to be reliable, professional, and trustworthy. She states that Applicant exercises good judgment and has an outstanding work ethic. Applicant was sincere and credible during her testimony. (AX K.)

### **Policies**

"[N]o 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 applicants 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's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines 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 and 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 that 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 made “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, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 92-1106 at 3, 1993 WL 545051 at \*3 (App. Bd. Oct. 7, 1993).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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). “[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**

### **Guideline F, Financial Considerations**

The concern under this guideline 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....

This 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(a): an inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

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

Applicant's financial issues arose in 2016 under unusual circumstances that are unlikely to recur and were largely beyond her control. Specifically, coincident with receiving a duplicate payment that was deducted from her pay for three months, Applicant's husband stopped making any financial contributions to the household. Applicant was unable to maintain her consumer credit-card payments on her retirement and disability pay. However, she maintained her mortgage-loan payments. Applicant and her husband separated in 2019.

While attending college, Applicant met with a credit counselor on several occasions and learned techniques for addressing delinquent debt. In 2018, Applicant began contacting her creditors in an effort to pay her smaller accounts and enter repayment plans with the larger accounts. She received seven 1099-Cs that she filed with her 2019 and 2020 federal tax returns..

Applicant has resolved each of the debts alleged in the SOR through either cancellation of debt or repayment. She provided documentation showing the repayment of five of the SOR debts. Through the cancellation of debt and the repayment of her accounts, Applicant has resolved \$41,328 of delinquent debt, which is greater than 73% of the SOR debt. She has not recently been contacted by any of the creditors of the SOR debts. She has re-established credit with six of the creditors of the SOR debts.



Applicant, on the advice of the credit counselor, has used her credit cards to continue to work on re-establishing her credit. She was advised to carry small balances, allow the balances to be reported on her credit reports, and then pay them. From January 2022 until October 2022, Applicant reduced credit-card balances by more than \$6,000. She continues to make timely payments on all of her open accounts with balances, including her mortgage loan, and her two car loans.

Applicant has acted in good faith in her efforts to resolve her financial delinquencies. “Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

“A security clearance adjudication is an evaluation of a person’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure.” ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection.

There is nothing in the record that suggests Applicant is financially reckless or irresponsible or that she is likely to disregard her financial obligations in the future. She established a plan to resolve her debts and has implemented that plan. She lives within her means, maintains a budget, and has not incurred any recent delinquent debt. She maintains a checking account, savings account, and a retirement account. She has a positive net monthly remainder. Applicant’s past financial issues do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant served honorably in the Army for 24 years, including five deployments. She demonstrated her dedication to continuing to serve as a civilian through her pursuit

of a degree in logistics, the field in which she now works. She is financially stable and fiscally responsible. She was sincere and credible while testifying.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the potential security concerns raised by her financial issues. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

### **Formal Findings**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a through 1.v:	For Applicant

### **Conclusion**

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess  
Administrative Judge