



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



In the matter of:)
)
) ISCR Case No. 22-01742
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

11/16/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to make sufficient progress resolving the debts alleged in the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On December 12, 2022, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. Applicant provided an undated response to the SOR, and he requested a hearing before an administrative judge. (SOR Response)

On April 11, 2023, Department Counsel was ready to proceed. On May 5, 2023, the case was assigned to me. On July 18, 2023, the Defense Office of Hearings and Appeals issued a notice setting the hearing date for August 15, 2023. The hearing was held as scheduled using the DOD Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered four documents, Government exhibits (GE) 1 through 4; Applicant did not offer any exhibits, but I labeled two documents, Applicant's Exhibits (AE) A and B, that he had previously provided in response to a DOHA request in October 2022. All proffered exhibits were admitted into evidence without objection. I provided Applicant a blank Personal Financial Statement (PFS) immediately after the hearing concluded, and I held the record open for two weeks in the event either party wanted to supplement the record with that additional information. Applicant timely submitted four documents I labeled as AE C, D, E, and F, and I admitted all proffered exhibits into evidence without objection. On August 22, 2023, I received a copy of the transcript. (Tr.) The record closed August 30, 2023.

Findings of Fact

In Applicant's SOR response, he admitted all four allegations in SOR (¶¶ 1.a-1.d). The four defaulted student loans totaled \$22,693. His admissions are accepted as findings of fact.

Applicant is a 52-year-old employee of a defense contractor assigned to a U.S. Air Force (AF) base as a training - roles manager and hybrid site integrator. He has worked for a DOD contractor since March 2019, and in January 2022, he moved to another state and a new AF base to do essentially the same type of work. He served honorably in the U.S. Air Force from 1994 to 2018. He retired at the rank of master sergeant (E-7). His military specialty was surgical technician. He earned an associate degree, and during 2016 to 2018 he attended another university, but he did not graduate with a bachelor's degree. He has been married to his wife since 1993, and they have two adult children and a 14-year-old daughter. His wife is employed as a cosmetic sales representative. (Tr. 18- 20, 23; GE 1)

Financial Considerations

Applicant began to experience financial issues after retiring from the Air Force in 2018. He admitted that he was not good with the transition and the deductions from his pay, which ultimately caused adverse tax consequences. He has resolved all of his delinquent federal tax issues, and he has setup a payment plan with the state tax board for his delinquent 2021 taxes. He has made approximately eight monthly payments to the state. All of their state and federal tax returns are filed. They have an extension until October 2023 to file their 2022 tax returns. (Tr. 20-23)

While Applicant attended a university from 2016 to 2018, he told the finance office that he wanted his GI Bill to pay for his tuition, and that he did not want to accrue any type of debt. In October 2021, while speaking with an authorized DOD investigator during his

background investigation, he learned of his student loan debt covering the 2016-2018 period. He contacted the Department of Veterans Affairs and the university to inquire about this debt, and Applicant discovered he had signed paperwork to have any outstanding tuition that was not paid by the GI Bill to be covered by grants and/or student loans. (Tr. 23-32; SOR response; GE 2)

After Applicant graduated from high school in 1988, he attended other colleges until 1992. He was fully aware that he had accumulated some student loan debt for those specific years. Although he admitted that he did not owe much tuition for these earlier years of college before enlisting in the military, he had not made any effort to satisfy these delinquent student loans. He never initiated contact with the student loan creditor to request loan forbearance, loan deferment, consolidation, or loan rehabilitation, but he did tell the loan servicer that he was in the military. He stated that years ago he had received phone calls and letters requesting payment for these student loan debts. (Tr. 23-32; SOR response; GE 2)

During Applicant's October 2021 background interview, he told the investigator that he was currently living paycheck to paycheck. Once he got his income under control he intended to pay back all of his creditors, but his unpaid taxes were his first priority. He did not disclose the delinquent student loans he accumulated right after high school under the financial section of the 2021 SCA. The four student loans alleged in the SOR are the debts he developed during 2016-2019 while he was still enlisted in the military. He and his wife have completed the Dave Ramsey financial course on two separate occasions since 2015. (Tr. 23-32; SOR response; GE 1, GE 2)

In September 2022, Applicant was contacted by a representative of DOHA and learned that his security clearance was still in-process. Applicant was asked to provide updated information to DOHA concerning the status of his defaulted student loans. The first time the Applicant ever contacted the student loan servicer regarding his delinquent student loans occurred in about October 2022. He made a phone call to determine how he could get these loans out of default. He said he was able to get the loans rehabilitated without making payments, and his loans were placed with Nelnet. He was able to set up a payment plan to begin in October 2023. He also submitted paperwork to have his student loans considered for debt forgiveness, but he has not yet received a response. He admitted that over all these years he has never made a single payment on his delinquent student loans. The record does not show that his student loans had been rehabilitated. (Tr. 33-34; SOR response, AE A, AE B)

SOR ¶ 1.a alleges a delinquent student loan with the U.S. Department of Education in the amount of \$7,891. Applicant provided documentation that he was scheduled to begin making payments on the loan in October 2023. He admitted that since learning of the delinquency in 2021, he has never made a payment on his delinquent student loan.

SOR ¶ 1.b alleges a delinquent student loan with the U.S. Department of Education in the amount of \$5,771. Applicant provided documentation that he was scheduled to begin making payments on the loan in October 2023. He admitted that since learning of the delinquency in 2021, he has never made a payment on his delinquent student loan.

SOR ¶ 1. alleges a delinquent student loan with the U.S. Department of Education in the amount of \$5,151. Applicant provided documentation that he was schedule to begin making payments on the loan in October 2023. He admitted that since learning of the delinquency in 2021, he has never made a payment on his delinquent student loan.

SOR ¶ 1.d alleges a delinquent student loan with the U.S. Department of Education in the amount of \$3,880. Applicant provided documentation that he was scheduled to begin making payments on the loan in October 2023. He admitted that since learning of the delinquency in 2021, he has never made a payment on his delinquent student loan.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law, providing relief measures on Department of Education (DoED) owned federal student loans through September 30, 2020. This student loan debt relief received several extensions. In March 2020, as a result of the COVID-19 pandemic, the President directed the DoED to place federal student loans in forbearance. The federal government repeatedly extended the student loan payment pause. The pause includes the following relief measures for eligible loans: a suspension of loan payments; a 0% interest rate; and stopped collections on defaulted loans. See Federal Student Aid (FSA) website, <https://studentaid.gov/announcements-events/covid-19>. (HE 2) On February 25, 2023, the FSA website said:

The student loan payment pause is extended until the U.S. Department of Education is permitted to implement the debt relief program or the litigation is resolved. Payments will restart 60 days later. If the debt relief program has not been implemented and the litigation has not been resolved by June 30, 2023 — payments will resume 60 days after that. We will notify borrowers before payments restart.

In August 2022, President Biden announced forgiveness of \$10,000 or \$20,000 of federal student loan debt, and on November 11, 2022, the DoED said they would continue to seek forgiveness of student loans. See “Statement from Secretary of Education Miguel Cardona on District Court Ruling on the Biden-Harris Administration Student Debt Relief Program,” <https://www.ed.gov/news/press-releases/statement-secretary-education-miguel-cardona-district-court-ruling-biden-harris-administration-student-debt-relief-program>. (HE 4)

I e-mailed Applicant a blank PFS immediately following the hearing to obtain current information about his income and monthly budget. Applicant timely submitted the PFS showing that after receiving a net monthly income of \$10,766, and subtracting monthly expenses, to include a monthly 2020 state tax payment, a monthly 2021 federal tax payment, and a Nelnet student loan payment of \$110, he had a monthly net remainder of \$5,111.56. (AE C)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying 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.”

The SOR alleges four delinquent student loans totaling approximately \$22,693. The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

- (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.

The only delinquent debts Applicant have at this time are his four federal student loans totaling \$22,693. He makes a six-figure income, and he has been continuously employed since 2019. He was placed on notice when he filled out his SCA in February 2021 that a security clearance holder's financial history was of security concern to the government. In October 2021, he was confronted by the DOD authorized investigator about his delinquent student loans. He answered interrogatories in October 2022, and he received his SOR in December 2022. He had plenty of opportunities to take responsible action to begin repaying or rehabilitating his delinquent loans. Applicant did not initiate contact with the DoED until only after he had been contacted by DOHA in September 2022 requesting that he provide updated information on his defaulted student loans.

Based on the current PFS, Applicant's *net* (emphasis added) annual salary totals about \$129,192. Even with the student loan monthly payment included in the PFS, he had a monthly net remainder of \$5,111. Applicant's four delinquent federal student loans are currently deferred under the CARES Act. Although his student loans are currently in a deferment status, it is important to note that he has not made any payments to this creditor, which caused them to go in default before the CARES Act was enacted and while he was gainfully employed. Applicant stated that he intends to make student loan payments beginning in October 2023, but he has not established a steady track record of payments even though he certainly has the financial resources to do so. As of the date of the hearing, he had never made a student loan payment willingly. The timing of his actions to address his defaulted student loans does not demonstrate he initiated a good-faith effort to repay these creditors until his security clearance was in peril.

It is well-established that the timing of debt payments is a relevant consideration for a judge to deliberate whether an applicant has acted in a reasonable and responsible

manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere “to a good-faith effort to repay overdue creditors or otherwise resolve debts.” Directive, Encl. 2, App. A ¶ 20(d). Applicant’s recent actions to resolve his delinquent student loans only after he learned his security clearance was in peril do not receive this mitigating credit.

None of the mitigating factors apply. I find that repaying student loan creditors has not been a priority for Applicant, especially when taking into account his annual income and his monthly net remainder of over \$5,000 after paying his monthly expenses. In the context of his security eligibility, I find that Applicant did not act responsibly by failing to address his delinquent student loans earlier. Applicant’s actions under these circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment. Guideline F security concerns have not been mitigated.

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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment. I considered his age, length of employment, honorable military service, and his recent actions to rehabilitate his student loan and set-up a payment plan, which although occurred rather late at this juncture, it is still a step in the right direction.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance. Even before 2021, Applicant has shown little voluntary effort to address his older defaulted student loans. Considering the lack of evidence of good-faith efforts to responsibly resolve these accounts, his financial history raises unmitigated questions about his reliability, trustworthiness, and ability to protect classified information.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

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.d:	Against Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge