



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



In the matter of:)	
)	
)	ISCR Case No. 22-01846
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

11/24/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 17, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). On February 17, 2023, Applicant provided a response to the SOR (Answer). He requested a hearing before an administrative judge. The case was assigned to me on September 12, 2023.

The hearing was convened as scheduled on November 9, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 3 and Applicant Exhibits (AE) A through G, without objection. At Applicant’s request, I left the record open for the submission of post-hearing documents. Applicant timely provided AE H and AE I that I admitted in the record without objection. He also testified at the hearing. I received a transcript (Tr.) of the hearing on November 17, 2023.

Findings of Fact

Applicant is a 27-year-old employee of a government contractor for which he has worked since July 2018. He has never been married and has no children. He earned a bachelor's degree in May 2018 and has been taking classes towards a master's degree since 2021. (Tr. 34-41; GE 1; AE A)

In the SOR, the Government alleged Applicant's seven delinquent federal student loans totaling approximately \$37,000 (SOR ¶¶ 1.a through 1.g). He admitted all the SOR allegations, which are established by his admissions and the Government's 2022 credit report. (Answer; GE 3)

Applicant's delinquent student loans are being resolved. He opened student loan accounts to pay for his undergraduate education. He became delinquent on these accounts in 2019, after a miscommunication with his mother. He believed she was paying the accounts while he got his financial situation in order after starting his first job after college. He claimed that she had agreed to this arrangement, but, unbeknownst to him, she did not make any payments on the accounts. I take administrative notice that all federal student loans were placed in a deferment status because of the COVID-19 pandemic (Deferment) as of late March 2020. The accrual of interest on student loans was also suspended during the Deferment. Available evidence shows that Applicant was delinquent on these debts prior to the Deferment. The Deferment ended in September 2023. (Tr 19-22, 42-51; Answer; GE 2, 3; AE C, D, H, I)

Sometime during the Deferment, Applicant contacted the Department of Education (DOE) to apply for an Income-Contingent Repayment Plan (ICR Plan). In March 2023, the DOE granted his application for the ICR Plan. Pursuant to the ICR Plan, he has been required to pay at least \$405.01 per month since April 2023. Since March 2023, he has paid at least that monthly amount and has paid off one of the seven student loans listed in the SOR. His plan is to pay his student loan accounts pursuant to the ICR Plan until they are paid in full. He claimed that he will pay these loans off in two to three years, which is far earlier than the timeline envisioned by the DOE. After March 2023, the accounts remained in good standing through the end of the Deferment, and there is no evidence that they are delinquent. The Government's and Applicant's 2023 credit reports reflect that the student loans are in good standing. He testified that the balance on his student loan accounts is between \$33,000 and \$34,000. (Tr. 21-24, 27-28, 35-36, 42-51, 54-60; Answer; GE 3; AE C, D, H, I)

During the Deferment, Applicant decided to take advantage of the suspension of payments and interest to pay off an auto loan with an interest rate higher than that of his student loans. As of April 2023, he had paid approximately \$38,000 to pay off this auto loan. He acknowledged that he knew his mother had not been paying his student loans in about May 2022 when a DoD investigator referenced them being delinquent. Despite this realization, he continued to concentrate on paying the auto loan because of its higher interest rate and because of the Deferment. He acknowledged that he was negligent in monitoring his student loan accounts and should have checked on them far earlier than he did. He credibly testified that he has learned his lesson, he has matured,

and he understands the importance of timely repaying his financial obligations. (Tr. 19-23, 48-51; GE 2, 3; AE B, C, H, I)

Applicant now earns about \$120,000 annually. His starting salary in 2018 was about \$68,000. He has earned a number of merit-based awards and bonuses at work. In December 2021, while working full time, he began attending a graduate program at a nearby university, where he has a 3.1 grade point average. He is current on his tuition payments, which are partially repaid by his employer. He has not opened any additional student loan accounts to pay for his graduate courses and does not plan to do so. He is on course to earn his graduate degree in the spring of 2025. He has volunteered with an organization that encourages and mentors young students interested in science, technology, engineering, and mathematics (STEM). He testified that he had about \$17,000 combined in his checking and savings account. He has been contributing about 15 percent of his salary to a retirement account that had a balance of about \$118,000, but plans on reducing that amount to about 12 percent to have more money to pay down his student loans. He currently has no delinquent financial accounts. (Tr 23-27, 37-41, 52-54, 57, 61; AE A, C, E, F, G)

Policies

This case is adjudicated 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), which became effective within DOD on June 8, 2017.

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

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant’s seven student loans, totaling approximately \$37,000, became delinquent in 2019. The loans were delinquent at the onset of the Deferment. The Deferment does not excuse previously delinquent student loans. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). The above disqualifying conditions are raised.

Conditions that could mitigate the 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; and

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

A meaningful track record of debt reform includes evidence that debts have been paid off or resolved. An applicant is not required to show that every debt in the SOR has been paid, and there is no requirement that a plan provide for payments on all outstanding debts simultaneously. ISCR Case No. 14-00504 at 2 (App. Bd. Aug. 4, 2014). Rather, an applicant is required to demonstrate that he or she has "established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." There is also no requirement that the first debts paid in furtherance of a reasonable debt plan are the SOR debts. ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). Guideline F mitigation does not require the payment of all the SOR debts. Instead, it requires that Applicant remove trustworthiness and reliability concerns raised by those debts. ISCR Case No. 14-00504 at 3.

During the Deferment, Applicant contacted the DOE to set up a repayment plan and has made payments pursuant to that plan. He credibly testified that he would continue to make the required payments and provided evidence that he has the income and funds to make his payments. He also planned to reduce the percentage of his income which he contributes to his retirement account so that he has more income to devote to his student loans. His student loan accounts are in good standing. He credibly testified that he understands that he made a mistake regarding his student loans and that he will not do so again. He paid approximately \$38,000 to satisfy another account with a higher interest rate. He acted in good faith to resolve the student loan accounts and bring them current. He has no financial delinquencies. Both the above-referenced mitigating conditions apply. The financial considerations security concern is 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 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. I have also considered his good work performance, his continuing effort to better himself through education, and his volunteer activities.

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concern.

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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Benjamin R. Dorsey
Administrative Judge