



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



In the matter of: )  
 )  
XXXXXXXXXX ) ISCR Case No. 23-00736  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

12/20/2023

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. Applicant failed to mitigate security concerns raised by his problematic financial history. Personal conduct security concerns were not established. This case is decided against Applicant.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 31, 2022. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 5, 2023, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The DOD acted 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on April 21, 2023 (Answer), and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On May 8, 2023, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 5. Applicant was sent the FORM on May 9, 2023, and he received the FORM on May 23, 2023. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in this case. Items 3 through 5 are admitted without objection. The case was assigned to me on September 28, 2023.

### **Findings of Fact**

Applicant is 51 years old. He earned an associate degree (May 2012) and has some credits towards a bachelor's degree. He is married (since 1998) and has three adult children. He reported five periods of unemployment from September 2012 to August 2022 ranging from two to ten months. He was unemployed from May 2018 (when his contract ended) until November 2018. His most recent period of unemployment was from August 2022 (when his contract ended) to October 2022. Both contracts that ended were for full-time employment. Since October 2022, he has worked full time for a defense contractor. He has never before held a national security clearance. (Item 3.)

Under Guideline F, the SOR alleged that Applicant has 28 delinquent accounts totaling \$88,998. Sixteen of those accounts are for federal student loans totaling \$67,373. Eleven are consumer accounts totaling \$19,125. One is a \$2,500 delinquent federal income tax account for tax year 2020. (Item 1.) He admitted all 28 SOR accounts. (Answer.) The student loans and consumer accounts are reported to be in collections. (Item 4.)

Applicant admitted the 16 federal student loan allegations, with the following qualification: "[Y]es I do owe student loans, however payments were/are on hold by the current administration due to the pandemic. I am not in default and will pay what is needed to be current so that I CAN continue my education and complete my bachelor's degree." (Answer.)

On numerous occasions, President Joseph R. Biden, Jr., and his predecessor ordered automatic administrative forbearances of federal student loan payments (a "pause") from March 13, 2020 to September 1, 2023, due to the COVID-19 pandemic. Borrowers' first payments after the pause were due to start in October 2023. Borrowers will receive bills with the payment amount and the due date. I have taken administrative notice of the history and current status of the federal student loan program. There is no evidence that Applicant received such a bill and failed to pay it. (<https://studentaid.gov/announcements-events/covid-19>).

Applicant admitted the 11 consumer loan accounts and the federal income tax delinquency. (Answer.) He pleaded generally that he intended to pay "once he is in a

long-term Permanent position,” or that he was unable to pay due to a lay-off, insufficient income, or some combination thereof. (Answer ¶¶ 1.a, e, s, t – z.) He provided no details or documents supporting his claims (personal finances or contacts with creditors). In his background investigation, he reiterated that he plans to pay these debts but has made no arrangements or agreements to do so. (Item 5.)

Under Guideline E, the SOR alleged that Applicant deliberately failed to disclose that his federal student loans and consumer loans were in collection or delinquent. (SOR.) Applicant did not respond to this allegation. It is, therefore, deemed a denial. He disclosed his delinquent income tax debt in his SCA.

Section 26 of Applicant’s SCA asked in pertinent part: “In the past seven (7) years, you had bills or debts turned over to a collection agency? [and] In the past seven [7], you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Item 3.) He answered “No” to both questions and did not disclose the status of his student loans or his consumer loans. (Item 3.) He did, however, discuss those loans in his background investigation, where he stated: [He was] not aware [he] needed to list non-delinquent student loan payments. As to his consumer loans, he stated that: [He was not] aware [he] needed to list debts more than seven years old. (Item 5.)

### **Law and Policies**

It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information. An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information. ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004). The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted. An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven. In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. Directive, ¶ E3.1.14; Directive, Enclosure 3, ¶ E3.1.15.

In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence. *Egan*, 484 U.S. at 531. The Appeal Board has followed the

Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard. ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

## Discussion

### Guideline F - Financial Considerations

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.

The overall concern is:

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. AG ¶ 18.

The concern is broader than the possibility that a person might knowingly compromise classified information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

In analyzing the facts of this case, I considered the following disqualifying conditions or factors:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ 19(f) failure . . . to pay annual Federal . . . income tax as required.

I also considered the following mitigating- conditions or factors:

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; and

AG ¶ 20(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's admissions and the Government's credit report supports a conclusion that Applicant has had a problematic financial history. Facts admitted by an applicant in an answer to a SOR require no further proof by the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) ("any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof"); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) ("[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings"). The record raises security concerns under disqualifying factors AG ¶¶ 19(a), 19(c), and 19(f).

The next inquiry is whether any potentially mitigating conditions apply. Applicant's delinquent consumer debts are numerous and persist to this day. They are recurring. AG ¶ 20(a) does not apply.

I also considered AG ¶ 20(b) as a mitigating condition. Applicant alluded generally to his lack of a permanent position, layoffs, or insufficient income as causes of his financial problems. Although he provided no concrete details, those factors could be "largely beyond" his control as contemplated by AG ¶ 20(b). Thus, the first requirement of AG ¶ 20(b) is satisfied.

That does not, however, end the inquiry. Applicant must have "acted responsibly" under the adverse conditions he confronted. Here, Applicant's conduct amounted to nothing more than stating his intent to pay in the future. He showed no solid efforts to address debts under his adverse circumstances. What is required is that an applicant have a reasonable plan to pay off his debts and has taken some steps towards execution of that plan. Mere promises to pay are insufficient. *See, e.g.*, ISCR Case No. 09-08462 at 3 (App. Bd. May 3, 2011). AG ¶ 20(b) does not apply.

I have considered mitigating condition AG ¶ 20(g). Applicant admittedly has made no plan or arrangement with the federal tax authority to address his delinquent income taxes. Therefore, AG ¶ 20(g) does not apply.

Applicant's federal student loans were in an automatic state of administrative forbearance from March 13, 2020 to September 1, 2023. His loans were deferred and not deemed to be in default during that time. I find in favor of Applicant as to his federal student loans, notwithstanding that they were reported in collections in November 2022.

### **Guideline E - Personal Conduct**

In assessing an allegation of deliberate falsification, I consider applicant's answer and all relevant circumstances. AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6) (explaining the whole person concept). Under Guideline E for personal conduct, the concern is that "[c]onduct

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 classified or sensitive information." A statement is false or dishonest when it is made deliberately (knowingly and willfully). An omission of relevant and material information is not deliberate if, for example, the person genuinely forgot about it, inadvertently overlooked it, misunderstood the question, reasonably did not know the information, or genuinely thought the information did not need to be reported.

The evidence shows that Applicant did not disclose his federal student loans on his SCA. In his background investigations, he explained that he was "not aware [he] needed to list non-delinquent student loan payments." Given the evolving history of the current student loan program, that was a reasonable and honest answer. I do not find that he deliberately omitted listing his student loans in his SCA.

The SOR also alleged that Applicant deliberately omitted his delinquent consumer loans from his SCA. He did not disclose those debts in his SCA. Parsed in more detail, the SCA asked: (1) Were any bills or debts turned over to a collection agency; and (2) Was any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? His Answer failed to respond to this allegation, so it was deemed a denial. In his background investigation, he denied by saying: "[He was not] aware [he] needed to list debts more than seven years old."

Applicant's state of mind (deliberately) was, therefore, controverted. That the only credit report noted that the consumer loans were in collections is not evidence that he knew those accounts were in that status and were so reported or knew they had not been paid when he completed his SCA. Nor is his failure to disclose them in his SCA evidence of a deliberate state of mind in omitting them. In short, the Government has not carried its burden. Guideline E security concerns are not established. I do not find that he deliberately omitted listing his consumer loans in his SCA.

### **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.

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 and Guideline E in my whole-person analysis.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For those reasons, I conclude that Applicant has not mitigated the security concerns arising under Guideline F, financial considerations. Security concerns arising under Guideline E, personal conduct, are not established.

## Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.b-1.e,1.g-1q,1.s: (Student Loans)	For Applicant
Subparagraphs 1.a, 1.f, 1.r, 1.t-1.aa: (Consumer Loans)	Against Applicant
Subparagraph 1.bb.: (Taxes)	Against Applicant
Paragraph 2, Guideline E	FOR APPLICANT
Subparagraph 2.a.	For Applicant

## Conclusion

In light of the record as a whole, it is not clearly consistent with the national interest to grant Applicant access to classified information.

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Philip J. Katauskas  
Administrative Judge