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

| | | |
|---|---|---|
| In the matter of: | ) | |
| | ) | |
| | ) | ISCR Case No. 21-01688 |
| | ) | |
| Applicant for Security Clearance | ) | |

## Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel
For Applicant: *Pro se*

03/14/2023

_____

## Remand Decision

_____

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

## Statement of the Case

On April 2, 2020, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On December 3, 2021, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On February 26, 2022, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on July 13, 2022, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on July 23, 2022. His response was due on August 22, 2022, and the record closed on that date. Applicant chose not to respond to the FORM, for as of September 7, 2022, no response had been received. The case was assigned to me on October 3, 2022. On October 14, 2022, I issued a Decision in which I concluded that Applicant had mitigated the security concerns regarding financial considerations and granted his eligibility for a security clearance.

The Government appealed the favorable decision to the DOHA Appeal Board alleging error by the Administrative Judge and seeking reversal of the decision. On January 10, 2023, the Appeal Board remanded the decision back to me, ruling that I had erred when I *sua sponte* obtained, considered, and relied upon non-record evidence from non-authoritative sources (newspaper articles) which I did not enter into the record without giving the parties notice of my intent and the opportunity to respond. I acknowledge that I should have entered copies of the newspaper articles into the record, not simply by citing the Internet Uniform Resource Locator (URL) but also by failing to enter the authoritative sources for the information cited. The Appeal Board concluded that the best resolution was to remand this case for the Judge to reopen the record, provide the parties any documents on which he intends to rely for taking administrative notice, and give them an opportunity to submit additional evidence or argument.

By Case Management Order, dated February 9, 2023, I furnished the parties copies of the following reliable source documents that I intended to use when reconsidering my Remand Decision: Exhibit 1 (Department of Education Press Release, dated August 16, 2022); Exhibit 2 (Consumer Financial Protection Bureau Press Release, dated September 15, 2020); Exhibit 3 (The Washington Post Article, dated September 15, 2020); and Exhibit 4 (Stipulated Final Judgment and Order, issued by Judge James R. Sweeney, II, of the United States District Court, Southern District of Indiana, dated October 1, 2020). The record in this case was reopened to enable the parties to consider those materials and they were given the opportunity to re-shape their evidence and arguments. Copies of new exhibits and argument the Department Counsel and the Applicant intended to offer were required to be provided to the Administrative Judge and to each other by 12:00 noon, Thursday, March 2, 2023.

Department Counsel timely responded (by submitting a new exhibit, a credit report marked and admitted as Item 10, as well as a memorandum containing her argument). Applicant did not respond even though his new facility security officer (FSO) informed him of the process and the fact that a Case Management Order had been issued. Applicant

finally opened the materials sent him on March 8, 2023. I kept the record open to enable him to respond, but as of April 14, 2023, he has not done so.

## Findings of Fact

In his response to the SOR, Applicant admitted, with comments, all of the SOR allegations. (SOR ¶¶ 1.a. through 1.p.). Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

### Background

Applicant is a 47-year-old employee of a defense contractor. He had been serving in an unspecified position since sometime after April 2020 when he submitted his SF 86. In February 2023, the FSO of his original employer informed me that Applicant was no longer employed by the company. Shortly thereafter, Department Counsel informed me that Applicant was now sponsored by a new employer. Applicant was consistently employed by other employers in a variety of full-time and part-time positions since September 1998. He never served with the U.S. military. He initially reported not having attended any schools in the ten years before 2020, but he subsequently acknowledged that he had attended ITT Technical Institute from 2008 until 2013. He denied having received a degree or diploma during the ten years before 2020. He was granted a secret clearance in 2014. He was married in 2017. He has no children.

### Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 8 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 5, 2014); Item 7 (DOD Continuous Evaluation Program (CEP) Incident Report, dated February 11, 2020); Item 3 (SF 86, dated April 2, 2020); Item 9 (Enhanced Subject Interview, dated September 24, 2020); Item 5 (Verate Credit Report, dated March 10, 2021); Item 2 (Answer to the SOR, dated February 26, 2022); Item 4 (Equifax Credit Report, dated July 5, 2022); and Item 10 (Equifax Credit Report, dated February 27, 2023.

In his SF 86, Applicant denied having any financial issues associated with delinquent accounts. (Item 2 at 32-33) On September 24, 2020, he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). During that interview, he disclosed that he had been having difficulties completing his SF 86 and while he was attempting to make corrections, he forgot to update the section with respect to his educational loans. He described the problems he had been having with ITT Technical Institute – the school he was attending – and he reported that the financial aid office had to locate additional funds for him to remain in school. The result was that in addition to his 12 student loans with the U.S. Department of Education, he had 2 student loans from another lender. (Item 9 at 2)

In addition to an allegation alleging that Applicant filed for Chapter 13 Bankruptcy in April 2008, which was discharged in about July 2013, the SOR alleged 15 still-delinquent accounts, of which the 14 student loans totaled approximately $101,248, and the remaining unpaid charge account totaled $2,167, as set forth below:

SOR ¶¶ 1.b. through 1.m. refer to student loan accounts with the U.S. Department of Education with unpaid balances of $14,362; $12,376; $12,021; $11,454; $8,689; $7,372; $6,479; $5,361; $5,280; $5,171; $4,248; and $2,639, respectively, that were placed for collection. (Item 5 at 2-4; Item 6 at 15-20; Item 10 at 4-10) In 2020, Applicant made some payments in the amount of $190.45 each to the U.S. Department of Education, by wage garnishments, all of which were applied to interest, fees, and other charges. In 2022, he made a $50 payment that was applied to interest. (Payment History attached to Answer to SOR) According to his most recent credit report, in January 2023, he reportedly paid the account as agreed and made one or more unspecified payments to several accounts, and is not past due. (Item 10 at 4-6) Further discussion regarding these accounts appears below.

SOR ¶¶ 1.o. and 1.p. refer to student loan accounts with another lender – PEAKS – the other lender "found by the school" with unpaid balances of $3,295 and $2,501 that were placed for collection and charged off. (Item 6 at 21) Because the account numbers reflected in the various credit reports are inconsistent, it is nearly impossible to match accounts up between credit reports of different years. Further discussion regarding these accounts appears below.

SOR ¶ 1.n. refers to a charge account with an unpaid balance of $2,167 that was placed for collection. (Item 5 at 4) On February 23, 2022, Applicant paid the creditor $2,167.65, and there is now a zero balance. (Receipt attached to Answer to SOR) The account has been resolved.

**ITT Technical Institute (ITT Tech)**

ITT Tech was considered a predatory for-profit college, and PEAKS, its holding company, would offer students tuition costs through private loans. A lawsuit was filed after ITT Tech – the university that Applicant attended and generated extensive student loans – entered bankruptcy and closed its 137 campuses in 2016. After the school's closure, hundreds of thousands of students were still required to pay for their outstanding student loans. A 2018 lawsuit settlement forgave $600 million that 750,000 students owed to the school. In June 2019, the Consumer Financial Protection Bureau (CFPB) reached a settlement with ITT Tech that discharged about $168 million in private student loans. In August 2019, an additional settlement was reached, including a judgment against ITT Tech for $60 million and an injunction that prohibited ITT Tech from offering student loans in the future. In September 2020, the CFPB reached another settlement, requiring ITT Tech to forgive $330 Million in outstanding student loan balances. In total, ITT Tech erased more than $500 million in private student loan debt. As noted by a press release by the Consumer Financial Protection Bureau and the Washington Post on September 15, 2020:

Forty-eight state attorneys general and the Consumer Financial Protection Bureau have secured more than $330 million in private student-loan forgiveness for 35,000 former students of ITT Technical Institute.

A judgment order entered Tuesday puts to rest a 2014 lawsuit accusing the defunct for-profit chain of steering students into predatory loans. PEAKS Trust, a private loan program run by ITT Tech and affiliated with Deutsche Bank entities, has agreed to forgo the collection of the outstanding education debt from ITT Tech students. It will also ask credit-reporting agencies to delete references to those loans from the credit reports of affected borrowers.

Eligible borrowers will be notified by PEAKS or their loan servicer and need to do nothing to receive forgiveness. At least 1,100 former ITT Tech students in Maryland will receive relief, while 1,840 borrowers in Virginia will have their private loans canceled.

“Maryland students were deceived when they were pressured into taking on these predatory loans,” Maryland Attorney General Brian E. Frosh (D) said in a statement Tuesday. “PEAKS will be required by this settlement to provide debt relief to Maryland students who we allege were misled while they were working hard to further their education.”

ITT Tech created two in-house student-loan programs as private lenders retreated from the market at the height of the 2008 financial crisis. Banks stopped extending credit to students at for-profit colleges, because of their historically high default rates.

ITT Tech issued students “temporary credits” to cover remaining tuition after federal and private student loans were taken into account. Some former students said the credits were marketed as grants, while others said they were told the credit would not have to be repaid until six months after graduation. But when the temporary credit became due, ITT Tech allegedly pressured students into accepting loans with double-digit interest rates from PEAKS.

According to the complaint, students said they were pulled out of class or threatened with expulsion if they refused to accept the loan terms. Many of the former students lacked the means to continue their education and said they felt there were no other options than to accept the loans. Eighty percent of the loans fell into default as students could not keep up with payments.

Even as students began defaulting in great numbers around 2011, ITT Tech continued issuing the high-cost loans. The tactics landed the company’s top brass in the crosshairs of the Securities and Exchange Commission. The federal agency settled fraud cases in 2018 against former ITT chief executive Kevin Modany and former chief financial officer Daniel Fitzpatrick

for allegedly deceiving investors about high rates of late payments and defaults on student loans backed by the company.

The SEC said executives made secret payments on delinquent accounts to delay defaults instead of disclosing the tens of millions of dollars in impending losses to investors. Executives assured investors in conference calls that the programs were performing well, while ITT's obligations to pay out on soured loans began to balloon, according to that complaint.

Before shutting down in 2016, ITT Tech was being investigated by more than a dozen state attorneys general and two federal agencies for alleged fraud, deceptive marketing or steering students into predatory loans. That legal morass led an accrediting body to threaten to end its relationship with the chain, which resulted in the Education Department curtailing ITT's access to federal student aid.

Days after closing and leaving 35,000 students and 8,000 employees in the lurch, the company filed for bankruptcy protection to liquidate its business.

(Ex. 2; Ex 3)

A more recent update took place on August 16, 2022:

Today, the U.S. Department of Education . . . announced that it will discharge all remaining federal student loans that borrowers received to attend [ITT Tech] from January 1, 2005, through its closure in September 2016. The decision, which follows Departmental findings based on extensive internal records, testimony from [ITT Tech] managers and recruiters, and first-hand accounts from borrowers, will result in 208,000 borrowers receiving $3.9 billion in full loan discharges. This includes borrowers who have not yet applied for a borrower defense < Caution-https://studentaid.gov/borrower-defense/ > to repayment discharge. These borrowers will have the federal student loans they received to attend [ITT Tech] discharged without any additional action on their part.

"It is time for student borrowers to stop shouldering the burden from [ITT Tech]'s years of lies and false promises," said U.S. Secretary of Education Miguel Cardona. "The evidence shows that for years, [ITT Tech]'s leaders intentionally misled students about the quality of their programs in order to profit off federal student loan programs, with no regard for the hardship this would cause. The Biden-Harris Administration will continue to stand up for borrowers who've been cheated by their colleges, while working to strengthen oversight and enforcement to protect today's students from similar deception and abuse."

Today's action brings the total amount of loan relief approved by the Biden-Harris Administration to nearly $32 billion for 1.6 million borrowers. This includes $13 billion related to institutions that took advantage of borrowers.

> It represents the Department's continued commitment to providing debt relief to eligible borrowers.
>
> Today's [ITT Tech] announcement builds on the Administration's previous actions related to [ITT Tech], which has resulted in the approval of $1.9 billion in discharges for 130,000 students to date. This includes borrower defense findings that [ITT Tech] engaged in widespread and pervasive misrepresentations related to the ability of students to get a job or transfer credits, and lying about the programmatic accreditation of [ITT Tech]'s associate degree in nursing. Separately, the Department announced an expanded window for borrowers who attended but did not graduate from [ITT Tech] to receive closed school discharges.
>
> "[ITT Tech] defrauded hundreds of thousands of students, as we identified when I was the director of the [CFPB]," said Federal Student Aid Chief Richard Cordray. "By delivering the loan relief students deserve, we are giving them the opportunity to resume their educational journey without the unfair burden of student debt they are carrying from a dishonest institution."
>
> The Department's findings around [ITT Tech] were assisted by significant and extensive work by attorneys general across the country, the [CFPB], and Veterans Education Success. The Department received important evidence from half the country's state offices of attorneys general, led by Colorado and Oregon Attorneys General and supported by significant evidence from the Iowa and New Mexico Attorneys General.
>
> The Department's findings are based on extensive evidence, including internal [ITT Tech] policies and records; recruitment materials and brochures; recordings of interactions between [ITT Tech]'s representatives and prospective students; testimony from former students, employees, and administrators; investigative files and submissions from congressional investigators and state offices of attorneys general; and the tens of thousands of individual borrower defense applications submitted by former [ITT Tech] students. . . .
>
> "The automatic loan cancellation announced today will provide life-changing relief that has long been owed to former [ITT Tech] students," said Rohit Chopra, director of the CFPB. "Far too many Americans are still on the hook for loans they acquired at colleges that profited from deceiving students, and the CFPB will continue to work with the Department of Education to address predatory student loan debt, to protect students, and to hold wrongdoers accountable."

(Ex. 1)

In addition, on October 1, 2020, a Stipulated Final Judgment and Order was issued in the U.S. District Court, Southern District of Indiana, regarding PEAKS. (Ex. 4) Department Counsel has conceded that as of March 2, 2023, the student loans are no longer delinquent. (Supplement – File of Relevant Material, at 2) In support of her position,

she argues that while elimination of a debt may reduce vulnerability to coercion, it does not mitigate concerns over an applicant's poor judgment as evidenced by the manner in which an applicant accumulated and addressed their debt, citing Appeal Board decisions in which applicants relied on a statute of limitations justification. (Supplement – File of Relevant Material, at 3, 5) While she is essentially correct in her assessment, in this instance there is no application of the law as associated with the statute of limitations. Also, she cites President Biden's pause on student loan collection efforts – placing them in a deferment status – as not constituting an excuse for past inactions in the context of security clearance eligibility. (Supplement – File of Relevant Material, at 6) Nevertheless, based on all of the above, Applicant is no longer legally responsible for the student loans generated by ITT Tech and PEAKS – not because of a statute of limitations defense or a COVID-19 pause in collection efforts – but because those loans were essentially the result of "years of lies and false promises" in "intentionally [misleading] students" otherwise referred to as consumer fraud. (Ex. 1 at 1) Department Counsel's argument that Applicant's failure to take more aggressive and timely action by paying the "illegal" loans rather than waiting for other corrective action, is not persuasive. It appears that the loans have been declared null and void.

When Applicant completed his application for student loan rehabilitation (rather than forgiveness) in March 2022, he reported approximately $2,380 in monthly income and approximately $2,134 in monthly household expenses, leaving a monthly remainder of about $246 available for savings or spending. Furthermore, Applicant's most recent credit report – the one dated February 27, 2023 – submitted by Department Counsel, reflects zero delinquent accounts, while reporting inconsistent entries regarding the student loans. In the absence of the student loans and the resolution of the delinquent charge account, there is clear evidence to indicate that Applicant's financial problems are now under control, and he is currently in a much better position financially than he had been.

## 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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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 and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan, 484 U.S. at 531*)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

## Analysis

### 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

> (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 alleged Chapter 13 Bankruptcy in April 2008, which was discharged in about July 2013, as well as 15 still-delinquent accounts, of which the 14 student loans totaled approximately $101,248, and the remaining charge account totaled $2,167. AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence to indicate an unwillingness to satisfy debts regardless of an ability to do so.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under 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;
>
> (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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue

AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply. As noted above, Applicant's Chapter 13 Bankruptcy (not Chapter 7, as initially argued by Department Counsel) was filed in April 2008 and discharged nearly a decade ago. Under Chapter 13, a debtor makes payments through the Trustee to the creditors. It is a process where the debtor does not avoid paying his debts, but rather one in which the debtor receives guidance in reorganizing his debts and paying them with the assistance of a bankruptcy trustee. There is no apparent connection between that bankruptcy and the student-loans issue.

In this instance, in an effort to rehabilitate his student loans, Applicant started the rehabilitation process and made some payments. Applicant was clearly the victim of ITT Tech – a predatory for-profit college – and its fraudulent lending practices. The attorney generals of 48 states and the CFPB went after that college and its holding company to extract justice for the defrauded students. Applicant's delayed and incomplete resolution attempts in such an environment should not be considered an unreasonable response. His actions do not reflect irresponsible character and evidence of poor judgment, poor reliability, and poor trustworthiness.

**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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. *See U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); *see also* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some disqualifying evidence regarding Applicant's financial considerations. He filed for Chapter 13 Bankruptcy in April 2008, which was discharged in about July 2013. In addition, the SOR alleged 15 still-delinquent accounts, of which the 14 student loans totaled approximately $101,248, and the remaining unpaid charge account totaled $2,167. Other than several minor payments, Applicant delayed or made incomplete efforts to resolve his delinquent student-loan accounts.

The mitigating evidence under the whole-person concept is simply more substantial and compelling evidence in favor of mitigating Applicant's financial considerations. Applicant is a 47-year-old employee of a defense contractor. He had been serving in an unspecified position since sometime after April 2020 when he submitted his SF 86. By February 2023, he was no longer with that employer and was now employed by another company in an unspecified position. He was consistently employed by other employers in a variety of full-time and part-time positions since September 1998. He attended ITT Tech from 2008 until 2013, but received no degree. He was granted a secret clearance in 2014. He was married in 2017. Although he filed for Chapter 13 Bankruptcy in 2008, that bankruptcy was discharged in July 2013, after he complied with the requirements of the Bankruptcy Trustee.

Aside from the questionable delinquent student-loan accounts, he resolved the only other delinquent account in his name. Forty-eight state attorneys general and the CFPB have secured hundreds of millions in private student-loan forgiveness for thousands of former students of ITT Tech. Applicant was clearly one of the consumer fraud victims of ITT Tech – a predatory for-profit college – and its illegal lending practices. There are no longer lingering questions if Applicant is currently in a better position financially than he had been, as well as any continuing doubt about his current reliability, trustworthiness, and good judgment.

Overall, the evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude Applicant has successfully mitigated the security concerns arising from his financial considerations. *See* SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

## 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. through 1.p.: For Applicant

## Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

_____
ROBERT ROBINSON GALES
Administrative Judge