



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00906
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2024

**Decision**

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 26, 2022. On May 30, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on July 11, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on September 12, 2023. On September 12, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on October 4, 2023, and did not respond. The case was assigned to me on January 3, 2023.

### **Evidentiary Issue**

FORM Item 6 is a summary of an enhanced subject interview (ESI) conducted on November 16, 2022. The ESI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that the ESI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and he was entitled to comment on the accuracy of the ESI; make any corrections, additions, deletions, and updates necessary to make the summaries clear and accurate; or object on the ground that the report was unauthenticated. I conclude that Applicant waived any objections to the ESI summary by failing to respond to the FORM. "Although pro se applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Item 6 is admitted in evidence.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-j. He owes \$34,598 in delinquent student loans and consumer debt totaling \$1,073. His admissions are incorporated in my findings of fact.

Applicant is a 33-year-old tool senior manufacturing planner for a defense contractor. He has worked for his employer since July 2017. He has been continuously employed since September 2010. He started working as a federal contractor in December 2013. He obtained his bachelor's degree in 2012 and a master's degree in 2016. He has never married and has no children. (Item 3.)

In his Answer, Applicant stated that over the past few years he had made a "conscious decision to save as much funds as possible with the plan to resolve [his] existing debts by utilizing a lump sum payment method to ultimately pay them off quickly and saving interest." He explained that he had been evaluating his financial priorities and made sure to not only set money aside to allocate towards his payment but also putting cash towards an emergency fund. He stated that his personal savings are now in a "financial position to execute this plan." (Answer.) He did not offer any financial information with his Answer or response to the FORM. The one credit report from October 2022 in the record reflects he is current on various revolving credit accounts. (Item 5 at 10-12.)

**SOR ¶¶ 1.a-h are student loans placed for collection totaling \$34,598.** Applicant told the investigator during his security clearance interview that he started having issues with his student loans in 2017 because the payments were too high. He did not contact the creditors. He told the investigator that in 2020 he was spending beyond his means and lacked good expense management and had difficulties setting up auto

pay. He told the investigator and restated in his Answer that he planned resolve these student loan debts “utilizing a lump sum payment approach.” (Item 4 at 3, 4.) The student loan debts are listed on his credit report. (Item 5 at 2-4.) These student loan debts were assigned between August 2008 and January 2012. (Item 5 at 3-4.) He offered no evidence of any action on these debts.

I have taken administrative notice that in March 2020, as a result of the COVID-19 pandemic, the President directed the Department of Education (DoEd) to provide the following temporary relief on DoEd-owned federal student loans: suspension of loan payments, stopped collections on defaulted loans, and a 0% interest rate. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided for the above relief measures through September 30, 2020. See Federal Student Aid (FSA) website, ISCR Case No. 20-02787 at 3 n.1 (App. Bd. Mar. 2022) This student loan debt relief was extended several times by subsequent Executive Orders. See <https://studentaid.gov/announcements-events/covid-19>. Congress recently barred any further extensions and DoEd announced that student loan repayments would resume in October 2023. See <https://studentaid.gov/debt-relief-announcement>.

**SOR ¶ 1.i: a delinquent cellular account placed for collection in the amount of \$689.** Applicant admits the debt. In his Answer, he states that the account was no longer delinquent and had been resolved. The credit report shows the debt was assigned in January 2022 and that it had been placed for collection. (Item 5 at 6.) He offered no evidence of any action on this debt.

**SOR ¶ 1.j: past due consumer account in the amount of \$384 with a total balance of \$472.** Applicant admits the debt. In his Answer, he states that the account was no longer delinquent and had been resolved. The credit report shows the debt more than 180 days past due and having been closed by the creditor in the amount of \$384 with a total balance of \$472. (Item 5 at 7.) He offered no evidence of any action this debt.

### **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 § 2.

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, 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.” 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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.

## **Analysis**

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

The security 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are established by the evidence:

- (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.

Applicant's federal student loans were assigned for collection starting in 2008. A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information. See ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While Applicant's student loans may no longer be considered delinquent since March 2020 because of the COVID-19 deferment, that action does not excuse previously delinquent student loans such as these. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). In addition, there's no evidence that he made payments toward his student loans once the payment pause was lifted in October 2023. The above listed conditions are made applicable to SOR ¶¶ 1.a-1.h, as well as to SOR ¶¶ 1.i-1.j, thereby shifting the burden to Applicant to provide evidence in mitigation.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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; and

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

Applicant admitted during his background interview he failed to settle the alleged debts and he provided no evidence of any action on these debts. Even if he has availed himself of any of the COVID relief options, it is his pre-Covid relief student loan delinquencies that led to collection and the insufficiency of the evidence that he acted responsibly under the circumstances that are determinative. He also provided no evidence to support his resolution of the two consumer debts. AG ¶ 20(a) is not established.

AG ¶ 20(b) is not established. Applicant offered no evidence of any difficulty in working with his creditors. His actions and statements regarding his handling of the debts alleged prior to any COVID relief options show that he has not acted responsibly under the circumstances. The Appeal Board in ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021) addressed this factual situation, noting that “the Judge addressed this issue by concluding that, while the President’s action effectively places Applicant’s student loans in a deferment status, it does not excuse Applicant’s past inactions in the context of security clearance eligibility.” (Decision at 9) The credit report in the record reflects that Applicant’s student loan delinquencies date back prior to any COVID relief options. (Item 5.) He provided no evidence to support his resolution of the two consumer debts.

AG ¶ 20(d) is not established. Applicant provided no documentary evidence to support his statements that he had saved as much funds as possible to execute his stated plan to resolve his existing debts by utilizing a lump sum payment method.

### **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 and applying the adjudicative factors in 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence leaves me with questions and doubts about Applicant’s eligibility and suitability for a security

