



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



In the matter of: )  
)  
) ISCR Case No. 23-01179  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

01/18/2024

**Decision**

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On September 28, 2022, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On June 30, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (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 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. (Hearing Exhibit (HE) 2) On July 6, 2023, Applicant provided a response to the SOR, and he requested a hearing. (HE 3)

On March 20, 2023, Department Counsel was ready to proceed. On June 28, 2023, the case was assigned to me. On September 28, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice setting the hearing for October 10, 2023. (HE 1) The hearing was held as scheduled using the Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered five exhibits into evidence; Applicant offered one exhibit into evidence; and all proffered exhibits were admitted into evidence without objection. (Tr. 11-15; GE 1-GE 5; Applicant Exhibit (AE) A) On October 19, 2023, DOHA received a copy of the transcript.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

### **Findings of Fact**

In Applicant's SOR response, he admitted all of the SOR allegations. (HE 3) He also provided mitigating information. His admissions are accepted as findings of fact.

Applicant is a 26-year-old product repair technician who has worked for a government contractor for 14 months. (Tr. 6-7, 17-18) In 2016, he graduated from high school. (Tr. 6) He attended a technical school, and in January 2019, he was awarded a certificate of completion. (Tr. 6-7, 17) He has not served in the military. (Tr. 7) He has never married, and he does not have any children. (Tr. 7, 17)

### **Financial Considerations**

Applicant had several periods of unemployment. His current gross annual pay is \$51,000. (Tr. 18) When he completed his undated personal financial statement (PFS), his gross annual pay was \$45,000. His PFS shows his monthly net pay is about \$2,900; his monthly expenses are about \$2,700; his monthly payment to a credit union is \$259; and his net remainder is negative \$94. (Tr. 18-19; GE 2) His credit union payment is for a vehicle loan for \$8,878. (Tr. 20) He did not list any other loan payments on his PFS. (GE 2) After his raise to \$51,000 annually, he has a positive monthly remainder of about \$200. (Tr. 21)

SOR ¶ 1.a alleges Applicant has a charged-off debt for \$4,300 and SOR ¶ 1.c alleges Applicant has an account placed for collection for \$1,507. In 2018, Applicant's transmission on his vehicle needed to be replaced, and he borrowed the funds from two creditors to pay for replacement of his transmission. (Tr. 23-24) He has not made payments arrangements to address either of these debts. (Tr. 22). He may have made one or two payments in 2018; however, he was unable to afford any other payments to the two creditors. (Tr. 25-26) He planned to make payment arrangements.

SOR ¶ 1.b alleges Applicant has an account placed for collection for \$20,306. Applicant said the loans for his technical school were obtained through the Department of Education (DoED). (Tr. 27-28) He did not provide documentation showing DoED

originated the debt in SOR ¶ 1.b. He received a six-month deferment after he completed the courses in January 2019, and then he made two or three small payments. (Tr. 29) In 2020, he believed the account was in a COVID 19 deferment, and in 2021, he started receiving notices from the collection agent. (Tr. 30) When he completed his September 28, 2022 SCA, he said for the SOR ¶ 1.b debt that he has “been making payment of my debt and collections to the best I can.” (GE 1) During his December 9, 2022 Office of Personnel Management personal subject interview, he said he intended to call the creditor “next week to set up a payment plan.” (GE 5 at 2) He did not attempt to arrange a payment plan until recently. (Tr. 30) He said it was possible the SOR ¶ 1.b debt was not a federal student loan. (Tr. 36)

On September 27, 2023, the SOR ¶ 1.b creditor offered Applicant a payment plan with \$100 monthly payments from September 28, 2023, to October 28, 2025; at that time the balance will be \$17,706; and a new payment arrangement can be made. (AE A) He made the first \$100 payment. (Tr. 30) He said the proposed \$100 payments are affordable to him. (Tr. 21)

Applicant’s June 26, 2023 credit bureau report shows six DoED student loans with balances ranging from \$2,132 to \$5,637, and the status of each loan is “pays account as agreed.” (GE 4)

Applicant did not receive financial counseling. (Tr. 32) He paid a credit-card debt which totaled about \$1,000. (Tr. 32) He paid off a debt related to a car for about \$4,300. (Tr. 33) In March 2022, he went to the Dominican Republic on vacation. (Tr. 34) His fiancée’s parents paid for the trip. (Tr. 35)

## **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"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20 which may be applicable in this case 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;

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant provided some important mitigating information. He had periods of unemployment, and he has made some progress addressing his debts. He has initiated a payment plan to address his student loan collection account, and he made the first \$100 payment. He paid two non-SOR debts. His annual income is about \$51,000, and he has sufficient financial resources to address his debts and establish his financial responsibility.

However, "[e]ven if [Applicant's] financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the [administrative judge] could still consider whether [he] has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he maintained contact with creditors and attempted to negotiate partial payments to keep debts current. Applicant provided limited supporting documentary evidence that he initiated or maintained contact with several creditors.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness.

See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicants are not required “to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (denial of security clearance remanded) (citing ISCR Case No.13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014)). There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant’s three SOR debts are not mitigated. He failed for several years to take meaningful action to address these debts. See ISCR Case No. 20-02219 at 3 (App. Bd. Oct. 28, 2021) (citing ISCR Case No. 15-02957 at 3 (App. Bd. Feb. 17, 2017) (even if an applicant paid a debt or is making payments on a debt, a Judge may still consider the circumstances underlying the debt as well as any previous actions or lapses to resolve the debt for what they reveal about the applicant’s worthiness for a clearance)). Student loans that were delinquent before the presidential suspension are not necessarily mitigated due to the change in status because of the COVID 19 emergency. See ISCR Case No. 20-02219 at 3 (App. Bd. Oct. 28, 2021) (citing ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021); ISCR Case No. 20-03208 at 2 (App. Bd. July 6, 2021)). He did not provide proof that he maintained contact with his creditors and attempted to arrange payment agreements until recently.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests.

In this instance, Applicant took some actions after the SOR was issued to bring his delinquent student loan to current status when he started a payment plan in 2023. The creditor provided a payment plan, and he made the first \$100 payment. However, the Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her financial problem, and the fact that applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of applicant’s security worthiness in light of his or her longstanding prior behavior evidencing irresponsibility. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

Under all the circumstances, Applicant failed to present sufficient evidence to mitigate the SOR debts. He did not establish a track record of payment of his delinquent SOR debts. Financial considerations security concerns are not mitigated at this time.

### **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 common-sense 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 that guideline but some warrant additional comment.

Applicant is a 26-year-old product repair technician who has worked for a government contractor for 14 months. In 2016, he graduated from high school. He attended a technical school, and in January 2019, he was awarded a certificate of completion. He has shown important efforts at self-improvement by achieving the certificate of completion, and his annual income has increased to \$51,000, which demonstrates that his employer is satisfied with his performance.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and this evidence is more substantial at this time than the evidence of mitigation. Applicant did not establish that he was unable to start payment plans on at least one of his SOR debts sooner. His failure to take timely, prudent, responsible, good-faith financial actions on the SOR debts raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

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)).



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 establishment of a track record of paying or resolving his debts, 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.b, and 1.c:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

---

Mark Harvey  
Administrative Judge