



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01044
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

03/22/2024

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**Decision**

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OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, Financial Considerations. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 4, 2022. On June 16, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD issued the SOR 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 18, 2023, provided documentation, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on November 6, 2023. On

November 21, 2023, DOHA issued a notice scheduling the hearing for December 11, 2023.

I convened the hearing as scheduled. Applicant testified and Government Exhibits (GX) 1 through 4 and Applicant Exhibits (AX) A through D were admitted to the record without objection. I held the record open until January 5, 2024, to allow both parties the opportunity to submit additional documentary evidence. Applicant timely submitted additional documents that were admitted to the record as AX E through J, without objection. DOHA received the hearing transcript (Tr.) on December 18, 2023. The record closed on January 5, 2024.

### **Findings of Fact**

In his Answer, Applicant denied SOR ¶¶ 1.a-1.g with explanations. After a thorough and careful review of the pleadings and evidence submitted, I make the following findings of fact.

Applicant is 31 years old. He attended college part time from August 2012 through December 2016. He took additional college courses online from June 2020 through September 2022. In both instances, he did not earn a degree. He has been employed as a configuration analyst by a defense contractor since September 2022 and is applying for his first security clearance. (GX 1-2; Tr. 9, 19-20, 38-39)

The SOR alleges that Applicant was delinquent on seven federal student loans, totaling approximately \$39,263. In his Answer, Applicant denied the allegations, but acknowledged that he took out the student loans to support his studies through December 2016. The SOR allegations are confirmed by his October 2022 and June 2023 credit reports. (Answer; GX 1-4)

From April 2012 through December 2018, Applicant worked as a personal electronics sales representative and his income was highly dependent on commissions. He described his earnings during that period as “not great pay.” Beginning in 2017, his expenses increased because he moved out of his parents’ home and he did a lot of “growing up” trying to pay his bills and maintain a budget. He testified that he started making payments on his student loans during this period, but quickly struggled financially. (GX 1-2; Tr. 21-22, 41, 71-73)

Applicant sought out a higher-paying job and, in June 2018, he was hired by a bank to work full time assisting customers with various loan and credit applications. He estimated that, with bonuses, he earned about \$49,000 annually in this position. He began to resolve other, unspecified debts. (GX 1-2; Tr. 24-26)

In late 2018, Applicant was advised by the U.S. Department of Education (DOE)’s Default Resolution Group that his student loans had been placed in default status. In response, he reached an agreement with the DOE to rehabilitate the loans which would then afford him an opportunity to apply for a lower monthly payment. He

testified that the DOE required him to make six monthly payments of \$500 under the plan and that, once he completed those payments, his DOE account would be rehabilitated. He did not provide documentation regarding this rehabilitation plan. (Tr. 22-25, 42-44, 52-54)

Instead, Applicant provided bank statements corroborating that he made monthly payments to the DOE of \$503 from December 2018 through March 2019. He then made a \$1,000 payment to the DOE in June 2019 and made monthly payments of \$550 from August through October 2019. He made an additional \$500 payment to the DOE in February 2020. He testified that he then submitted an application to complete the rehabilitation process on his student loans. However, he later learned that the DOE either did not receive or never processed the application. Therefore, his student loans remained in default status. Once he realized that his DOE account had not been rehabilitated, he considered consolidating the student loans with another creditor. However, he did not pursue that option due to the higher interest rate on the consolidated loan, which would have increased his overall repayment obligation. At the hearing, he acknowledged that he could have done more to follow through with his efforts to rehabilitate his DOE account. (AX D, F-G; Tr. 23-27, 44-52, 80-81)

In March 2020, with the impact of the COVID-19 pandemic, payments on federal student loans were paused as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The pause included several relief measures for eligible student loans such as a suspension of loan payments; a 0% interest rate; and suspension of collection efforts on defaulted loans. Payments resumed in October 2023. See Federal Student Aid (FSA) website, <https://studentaid.gov/announcements-events/covid-19/>.

Once payments were paused under the CARES Act, Applicant debated whether to keep making the \$500 payment on his student loans or accept the CARES Act pause. He opted to stop paying on his loans. With various types of federal action and the possible forgiveness of student loans being considered, Applicant figured “it was kind of all up in the air,” so he waited to see what would happen. (Answer; Tr. 30-35)

Meanwhile, from his time at the bank, Applicant assisted many customers in using their home equity to pay off their other bills including student loans. He prioritized purchasing a home as an investment he could use to potentially resolve his student loans once the CARES Act pause was lifted. He applied \$14,000 from funds he earned from a stock market investment to buy a \$300,000 house in 2020. (Tr. 25-30; 78-83)

Applicant considered but did not immediately apply for the “Fresh Start” program announced by the DOE in April 2022, whereby qualified borrowers with student loans in default could bring their loans current with the establishment of a new payment plan. See Federal Student Aid (FSA) website, <https://studentaid.gov/announcements-events/default-fresh-start>. (Tr. 30-32)

In September 2022, Applicant left his position with the bank and began working for his current employer earning an annual salary of about \$75,000. In early 2023, Applicant applied for the Fresh Start Program. In May 2023, upon being approved for the Fresh Start Program, his DOE account was rehabilitated and all seven of his student loans were transferred to EdFinancial for servicing. He testified “I set myself up on a student repayment program the right way this time, especially now since I have enough to financially cover everything.” (AX A, C, G, J; Tr. 32-40, 78-80)

In July 2023, as he was financial able to resume payments, Applicant submitted an application to EdFinancial for an income-driven repayment plan (IDR) to reduce his monthly payment. As of August 2023, the principle balance of his EdFinancial account was \$38,743, and with interest, the total to be repaid was \$51,822. EdFinancial approved his IDR, which established that he would pay \$381 per month, beginning in October 2023. He corroborated that, once the CARES Act pause was lifted, he made timely payments to EdFinancial, pursuant to the IDR, in October, November and December 2023; and that all seven alleged student loans are no longer in delinquent status. (AX A-B, E, G; Tr. 33-34, 76-78, 97)

In order to maintain payments going forward, Applicant testified that he created a designated direct deposit account where a portion of his salary is deposited to pay his student loans. He submitted a budget showing that he is able to meet his current monthly expenses, including his student loans, with a small net remainder. He maintains a retirement account with his employer and has no other delinquent accounts. He intends to continue managing his budget and paying his student loans. (AX H-I; Tr. 30-37, 67-69; 85-90)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 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, 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. According to AG ¶ 2(a), 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.” 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

## **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. . . .

The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses

concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

I have considered the disqualifying conditions for financial considerations under AG ¶ 19 and the following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

From August 2012 through December 2016, Applicant borrowed about \$38,743 from the DOE to attend college. Shortly after his student loan payments became due in 2017, they were placed into delinquent status where they remained into 2023. The above disqualifying conditions apply.

There are three pertinent conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial difficulties:

- (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.

Beginning in 2017, as Applicant struggled financially after moving out of his parents' house and while working a low-paying job, he was unable to make the required monthly payments on his student loans, which eventually led them to be placed in default status. After obtaining a new job with increased pay in 2018, he made inconsistent payments to the DOE through February 2020, in an attempt to rehabilitate his student loans. Despite those payments, his student loans remained in default when the CARES Act pause began in March 2020.

While Applicant chose to not make payments on his student loans during the CARES Act pause, he remained attentive to the various types of federal action on student loans that were being considered. After he obtained his current position in September 2022, which increased his pay, he applied for the DOE's Fresh Start

Program. In May 2023, he applied for an IDR to keep his payments manageable. He immediately began making timely payments once the CARES Act pause on student loan payments was lifted in October 2023.

Over the last eight years, Applicant described his own maturation in managing his income and monthly expenditures. He purchased a home, brought his student loans into good standing, and maintained a manageable budget that allows him to save some funds each month and build his retirement. He also maintains a dedicated direct-deposit account to manage his future student loan payments.

Applicant's financial issues occurred under circumstances that are unlikely to recur, and they no longer cast doubt on his current reliability, trustworthiness, or judgment. He has established, and is adhering to, a payment plan to address his student loan obligations. All of the above mitigating conditions are applicable.

### **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.

From late 2018 through February 2020, Applicant made multiple payments in an effort to rehabilitate his student loans. During the CARES Act pause in student loan payments that began in 2020, he researched various student loan repayment options and took steps to establish a payment plan that he could afford. He committed to maintaining a budget and was able to buy a house. Applicant established a meaningful track record of payments toward his student loans, which are in good standing.

Having had the opportunity to observe Applicant's demeanor during his hearing, I found his testimony credible and candid. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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: 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.

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Bryan J. Olmos  
Administrative Judge