



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



In the matter of: )  
)  
) ISCR Case No. 22-01680  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John C. Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2024

**Decision**

HALE, Charles C., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 18, 2022. On November 7, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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 December 12, 2022, and he submitted an additional answer on February 20, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on June

1, 2023. A complete copy of the file of relevant material (FORM) was sent to Applicant on June 5, 2023, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant did not submit a response. The case was transferred to me on May 14, 2024.

The SOR and the Answer (Items 1 and 2) are the pleadings in the case. FORM Items 3 through 6 and the Response enclosures are admitted into evidence without objection. Admission of FORM Item 6 is discussed below.

### **Evidentiary Issue**

The FORM included a summary of a personal subject interview (PSI) conducted on October 27, 2023. (Item 6). The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions, or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. He did not object to the PSI in his Response. I conclude that he waived any objections to the PSI summary by failing to object to the PSI in his Response. "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." See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Item 6 is therefore admitted.

### **Findings of Fact**

In Applicant's Answer to the SOR he admitted all nine allegations under Guideline F. SOR ¶¶ 1.a through 1.h involve delinquent student loans and SOR ¶ 1.i is a credit card account placed for collection. His admissions are incorporated in my findings of fact.

Applicant is 26 years old. He is married and has three children. He graduated high school in 2008. He lists attending community college from 2011 to the present but has not received a degree. (Item 3 at 10.) He received his security clearance in 2016 when he was employed by a federal contractor as a systems administrator for a federal department. Prior to his current position, he worked in various retail positions after high school. From 2009 until he obtained his current position, he worked in loss prevention, and he cited not being able to find a job that paid more than \$11 an hour for his financial problems. In his current position he told the investigator that after expenses and taxes he now has \$4,200 per month in income. (Item 6 at 2.)

Applicant discussed his student loans with the investigator who conducted his PSI. He explained he could not afford the \$300-\$400 payments because he could not find a job. He explained he moved when the loans started to become delinquent in the 2013 to 2014 time period and he "forgot to update his contact information so he never received collection attempts." (Item 6 at 2.). The February 2022 credit report shows a last activity date for his student loans as April 2016, with assignment dates of October 2008, September 2011, September 2013, and September 2014. (Item 4 at 2-4.) He stated he set up a \$40-a-month payment plan two to three years before his SCA. His student loans

are listed as “collection account” in the narrative code of the October 2022 credit report. (Item 5 at 4-6.) The October 2022 credit report shows the last activity date as April 2016 and date of first major delinquency as July 2017 for all of the student loans. (Item 5 at 4-6.) March 2020 is the last payment reflected for all of his student loans on the October 2022 credit report. (Item 5.) I take administrative notice that in March 2020 the U.S. Department of Education (DOE) announced an administrative forbearance for eligible student loans, the DOE automatically paused their loan payments and set their interest rate to 0%. See <https://studentaid.gov/announcements-events/covid-19>. He told the investigator he had been working with DOE to obtain a “promissory note” that he further described as a payment agreement to bring his account into good standing and that this effort had been going on for about a year. (Item 6 at 2.)

Applicant explained that the credit card account was placed for collection in the 2017 to 2018 time period. He had stopped using the card and forgot about it. (Item 4 at 4; Item 6 at 2.) He told the investigator he would pay it off in full “with[in] a few weeks.” (Item 6 at 2.) Five months after the interview the account was not reflected on his October 2022 credit report. (Item 5.)

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

Applicant's federal student loans were assigned for collection prior to 2020. 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). The above listed conditions are made applicable to SOR ¶¶ 1.a through 1.i, 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 admits his delinquent student loans and he provided no evidence showing actions taken that he discussed in his PSI concerning his student loans, which negatively impacts his current reliability, trustworthiness, and good judgment. Even if he had made the \$40 monthly payments on his student loan delinquencies, which led to collection, the insufficiency of the evidence that he acted responsibly under the circumstances is determinative. His credit card debt was assigned in October 2018 and the credit report taken five months after his May 2022 PSI does not show the credit card debt. He started his current position in October 2015. AG ¶ 20(a) is not established for SOR ¶¶ 1.a-1.h. AG ¶ 20(a) is established for SOR ¶ 1.i.

AG ¶ 20(b) is not fully established. Applicant experienced several years of underemployment, a condition largely beyond his control. He has not documented his statements concerning his actions before or after March 2020 regarding his handling of the student loans to show that he has acted responsibly under the circumstances. He estimates he has over \$4,000 of income per month after expenses and taxes. He started his current position in October 2015. The most recent credit report in the record reflects that Applicant's student loan delinquencies date back to at least July 2017. The Appeal Board in ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021) addressed this factual situation noting in that case "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."

AG ¶ 20(d) is not established. Applicant provided no documentary evidence that supports his PSI statements that he had been working with the DOE so that his credit report would reflect him in good standing.

### **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 clearance. I conclude Applicant has not mitigated the financial considerations security concerns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

|                           |                   |
|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.h:    | Against Applicant |
| Subparagraph 1.i.:        | For Applicant     |

## **Conclusion**

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

Charles C. Hale  
Administrative Judge