



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



In the matter of:)	
)	
)	ISCR Case No. 22-02065
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*

08/26/2024

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has not taken any steps to rehabilitate his student loans, despite having the opportunity to do so. He has no plan regarding the repayment of the loans. Clearance is denied.

Statement of the Case

On November 18, 2022, the DOD issued a statement of reasons (SOR) detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for

a determination whether to grant his security clearance. Applicant timely answered the SOR and requested a hearing.

At the hearing, convened on December 6, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated March 1, 2023. I admitted Government's Exhibits (GE) 1 through 6 without objection. Applicant did not submit any documentation. After the hearing, I left the record open until January 5, 2024, to allow Applicant to submit additional documentation. He did not. DOHA received the transcript on December 18, 2023.

Procedural Issues

At the hearing, I informed the parties that I intended to take administrative notice of information published by the Department of Education regarding the Covid-19 Emergency Relief and Federal Student Aid as provided to the public at <https://studentaid.gov/announcements-events/covid-19>, which is admitted to the record as HE II. I left the record open as indicated above to allow the parties to submit their response to the information provided. Department Counsel provided a response dated January 3, 2024, which is admitted to the record as HE III. Applicant did not provide a response. (Tr. 19-20)

Findings of Fact

Applicant, 45, has worked as an engineer for a federal contracting company since November 2019. He was initially granted access to classified information in 2015 in connection with his service in the U.S. Navy Reserve from October 2011 to 2022. He accepted a commission in the U.S. Air Force Reserve in April 2022. He completed his most recent security clearance application in May 2021. He did not disclose any derogatory information. A September 2022 credit report obtained during the investigation showed that Applicant obtained a Chapter 7 bankruptcy discharge of his debts in November 2013 and that he had seven student loans that were reported as being in a delinquent status. These financial issues are alleged in the SOR. (Tr. 20-23; GE 1-2, 4)

Applicant's financial problems began during his first marriage, which lasted from December 2001 to September 2011. He was underemployed between 2007 and 2011, causing the couple to struggle with their two largest expenses — housing and childcare. Between August 2009 and September 2013, he worked as an adjunct professor, initially earning \$18 per hour. When he earned his master's degree in May 2011, his pay increased to \$21 per hour. The couple paid \$1,200 each month in childcare expenses for their three children. He admitted the couple had ongoing financial problems. (Tr. 26-30)

When the couple separated, Applicant's recurring personal expenses increased because he had to pay his own living expenses in addition to his child support obligation. When the couple divorced in 2011, Applicant was assigned some of the marital debt. Still earning \$21 per hour, he decided to file for bankruptcy protection in

August 2013, seeking relief from \$131,866 of debt, including \$24,395 in consumer debt, a \$36,902 home equity line of credit, and \$70,569 in student loan debt, which was not eligible for discharge. (Tr. 30; GE 2)

Applicant obtained full employment in October 2013 as a field engineer for a private company. He earned \$27 per hour as well as income from his monthly reserve duty. He prioritized paying his \$2,300 monthly child support obligation over his other financial obligations. He admitted that he did not make consistent payments on his student loans. He made occasional \$100 good-faith payments toward the loans between 2013 and 2019, but admitted that he had never made more than three consecutive payments. He was not sure about the status of his student loans at the end of 2019. He claims that he tried to make payment arrangements with the servicer but stated that the proposed payment was unaffordable. According to GE 5, a credit reported dated November 20, 2023, the loans were delinquent since March 2019. He did not make any payments between March 2019 and December 2019. (Tr. 30-34, 43-45; GE 1-2,5)

In March 2020, the Department of Education issued student loan relief, which placed all student loans, including those in delinquent or defaulted status, into administrative forbearance. Although the emergency relief ended on September 1, 2023, the payments on most defaulted student loans will remain in administrative forbearance through September 2024 (see, <https://studentaid.gov/announcements-events/covid-19>). The Department of Education launched the Fresh Start Program to allow borrowers to rehabilitate defaulted student loans. Applicant testified that he made inquiries about the program but did not enroll. (Tr. 47-48; HE II)

Applicant testified that after paying his recurring financial expenses, he has only \$134 in discretionary income each month. He expects his child support obligation to decrease in 2025 because two of his four children will be over 18 years old. Although, the court-ordered obligation will decrease, his education expenses for his children may increase. He has one child entering college in Fall 2024, with another expected to follow in Fall 2025. The amount of his financial obligation is unknown, but expects to prioritize the expense over other financial obligations. (Tr. 37-43, 51-52, 56-62; GE 3)

Policies

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 to be 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, administrative judges apply the guidelines 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.

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

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Failure to meet one’s 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. An individual who is financially overextended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18) The record establishes the Government’s *prima facie* case that Applicant owed \$110,635 on seven student loans, which were in delinquent status before the Covid-19 emergency student loan relief in March 2020. He admitted that he had not made consistent payments on the student loans since at least November 2013, despite having all his other debts discharged through Chapter 7 bankruptcy protection in November 2013.

