



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 24-00143

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

11/26/2024

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**Decision**

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WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate financial consideration concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On January 24, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Service (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations guideline the DCSA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DoD Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); 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.

Applicant responded to the SOR on February 16, 2024, and requested a hearing. The case was assigned to me on August 30, 2024. A hearing was scheduled for September 24, 2024, and was heard as scheduled. At the hearing, the Government's case consisted of four exhibits. (GEs 1-4), which were admitted without objection. Applicant relied on one witness (herself) and three exhibits. (AEs A-C) The transcript (Tr.) was received on October 3, 2024.

### **Procedural Issues**

Prior to the close of the hearing, Department Counsel moved to amend Guideline F to add an allegation as follows: SOR ¶ 1.I to read as follows: "Appellant is indebted to the Federal Government for taxes owed for tax years 2022 and 2023 in the total amount of \$5,672." (Tr. 60-63) Applicant offered no objections to the Government's amendment motion, and the motion was granted.

Before the close of the hearing, Applicant requested the hearing be kept open to permit her the opportunity to supplement the record with updated payments and account status on her student loans, as well as payments on her owed federal taxes for tax years 2022 and 2023. For good cause shown, Applicant was granted seven days to supplement the record. Department Counsel was afforded two days to respond.

Within the time permitted, Applicant supplemented the record with loan details of some of the delinquent student loans covered in the SOR, albeit without any matching loan account numbers to compare with the listed 11 delinquent student loans in the SOR. Applicant also supplied (a) a summary of her student loans (with two consolidated, five not consolidated, and two that could not be found); (b) a confirmed \$50 payment made to her student loan servicer on a unidentified loan account; (c) listed payments made to the Internal Revenue Service (IRS) in 2024 for tax year 2022; and (d) endorsements from her facility security officers (FSOs). Applicant's post-hearing exhibits were received and admitted without objection as AEs D-G.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly (a) accumulated 11 delinquent student loan debts exceeding \$51,000. Added to the SOR by amendment were allegations of delinquent taxes owed the Federal Government in the amount of \$5,672 for tax years 2022 and 2023. Allegedly, these delinquent student loans and owed federal taxes remain unresolved and outstanding.

In her response to the SOR, Applicant admitted the allegations with explanations. She claimed she has been working to resolve her student loan debts since graduating from college. She claimed the loans were placed in forbearance during the COVID-19 pandemic with a Government hold pending the outcome of her loan forgiveness application under the Government's student loan forgiveness program. She also claimed that she has applied for student loan assistance with a U.S. Department of Education (DoE) servicing agent. Applicant further claimed that she is working to consolidate her student loans and is currently on a fixed repayment plan (as of 2023).

And, she claimed to be working through a workforce program to obtain her security plus certificate.

### **Findings of Fact**

Applicant is a 37-year-old employee of a defense contractor who seeks a security clearance. (GE 1; Tr. 25) Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant never married and has no children. (GE 1; Tr. 26) She earned a high school diploma in June 2005 and attended college classes between August 2005 and October 2013. (GEs 1-2) She is credited with earning an associate degree in October 2013. (GE 1) Applicant reported no military service.

Since December 2021, Applicant has worked for her current employer as an unarmed security officer. (GEs 1-2) Previously, she worked for other employers in various jobs. She has never held a DoD-issued security clearance. (GE 1; Tr. 26-27)

### **Applicant's Finances**

Between 2005 and 2013, Applicant took out 11 federally-guaranteed student loans from the (DoE) exceeding \$41,000 to finance her education. (GEs 2-4) Following a brief six-month grace period, her loans became due sometime in 2014. (Tr. 30-31) She made a few scattered payments on these loans over the course of the ensuing four years before defaulting on her payments. (GEs 2-4; Tr. 33) After working out payment plans with the DoE's servicing agent in 2018, she briefly resumed her payments before defaulting once again on her loan payments in 2019 before being assigned by the DoE for collection. (GEs 2-4; Tr. 33-36) Applicant attributed her student loan delinquencies to her limited resources and her need to prioritize her other debts. (GE 4)

While Applicant's mother paid off some of her student loans (fully paying off the 2005-2006 School A portion of her student loans and helping her with her 2007-2009 School B loans), Applicant's remaining loans were left to Applicant to manage herself. (Tr. 30-32)

Throughout the COVID-19 pandemic, Applicant's loans remained in forbearance. (Tr. 36) Claiming that all of her SOR-listed student loans have been consolidated (Tr. 41-43), she documented only two consolidations (sans any payment terms), neither of which identified the SOR-listed loans that were included in the consolidation. (AE D) Inclusive of accrued interest to date on these reported loans (both consolidated and unconsolidated), Applicant reported a current balance in September 2024 of \$71,551. (AE D) This reported balance reflects an increase over the \$55,443 balance reported in February 2024 (some likely attributable to cumulative interest).

To Applicant's credit, she documented a confirmed \$50 October 2024 payment to her loan servicer. However, the loan payment confirmation does not identify any of the SOR loans (consolidated or individualized) that the payment is credited to. (AE E) The only account number referenced in the payment confirmation cannot be cross-linked to any of the loans covered in the SOR. Further, any monthly payment plan arranged with her student loan servicer could be expected to materially exceed the \$50 payment credited to her by her loan servicer.

In early 2023, Applicant applied for loan forgiveness under an unspecified student loan forgiveness program. (Tr. 36) Her application has not been approved and remains in pending status. (Tr. 37)

In the summary of servicing loans furnished by Applicant's student loan servicer in October 2024, the DoE's servicing agent furnished a breakdown of nine of the 11 DoE student loans covered by the SOR. (AE G) These referenced loans include the two consolidated loans and provide information covering disbursement dates, original principal, outstanding principal and the assigned interest rates. (AE G) In turn, the DoE servicing agent confirmed its placement of Applicant's entire accounts in forbearance pending the servicer's completion of its review of Applicant's student loan accounts. (AE G)

What specific loan issues are under review by the servicing agent are not revealed. All that can be gleaned from the DoE's servicing agent's loan summary are the terms of the unresolved and still outstanding student loans that Applicant remains responsible for discharging. (AE G) Pending the outcome of her student loan forgiveness application, DoE's servicing agent has kept Applicant's loans in forbearance. (AE G)

What results she can expect from her forgiveness application is unpredictable. (Tr. 53) If denied, she will be faced with working out payment terms with her loan servicer on any of its fresh start plans with income sources of less than \$60,000 a year. (Tr. 53) What other sources of income she could rely on if needed is not developed and remains unclear.

Besides her accruing of delinquent DoE student loans, Applicant accumulated delinquent federal taxes for tax years 2022 and 2023 totaling \$5,672. Claiming to be working on these owed taxes, she confirmed 2024 payments to the IRS exceeding \$800. (AE F) While these payments are not confirmed by the IRS they are accepted and reflect a credible start to paying off her owed taxes for tax years 2022 and 2023.

## **Character References**

Applicant is well-regarded by her company facility security officers (FSO)s she has worked with during the past three years. (AEs A-B) Both credit her with demonstrated diligence and professionalism in the physical security and customer services she regularly provides to users and visitors in their cleared spaces. (AEs A-B).

Both FSO's found her to be attentive to the employer's employees and credited her with upholding her employer's security policies and facility protection responsibilities.

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. Eligibility for access to classified information may only be granted "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 AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information.

These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Financial Considerations**

*The Concern:* Failure or inability 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 or 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 acts or otherwise questionable acts to generate funds . . . . AG ¶ 18.

### **Burdens of Proof**

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. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 (4<sup>th</sup> 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*, 48 U.S. at 531; see AG ¶ 12(b).

### **Analysis**

Security concerns are raised over Applicant’s accumulation of delinquent student loans and owed past federal taxes for tax years 2022 and 2023. Her multiple failures to timely and consistently address her student loans and owed taxes for tax years 2022-2023 raise trust, reliability, and judgment concerns about her current and future ability to manage her finances safely and responsibly.

Applicant’s multiple defaults in her student loan repayment obligations and accumulations of delinquent tax payments for the 2022-2023 tax years warrant the application of three of the disqualifying conditions (DC) of the financial consideration guideline. DC ¶¶ 19(a), “inability to satisfy debts”; 19(c), “a history of not meeting financial obligations”; and 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns, or failure to pay annual Federal, state, or local income tax as required.” Each of these DCs bear relevance and materiality to Applicant’s situation. Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a security clearance holder’s demonstrated difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving delinquent debts.

Historically, the timing of addressing and resolving tax-filing and payment failures are critical to an assessment of an applicant’s trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015); ISCR Case No. 14-00221 at 2-5 (App. Bd. June 29, 2016). So, too, the Appeal Board has consistently imposed evidentiary burdens on applicants to provide documentation corroborating actions taken to resolve financial problems, whether the issues relate to student loans, back taxes, consumer debt, child support, medical, or other debts and accounts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan20, 2020).

Before Applicant’s DoE student loans were paused by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in March 2020, she had accumulated over \$50,000 in delinquencies on 11 separate student loans, dating to 2015. Prior to defaulting entirely on her loans in 2018, she had made a few scattered loan payments on her SOR-listed delinquent student loans. And, by the time the pause generated by

the CARES Act of 2020, and ensuing extensions passed by a series of executive orders had expired, Applicant's total student debt threshold exceeded \$71,000 (the result of cumulative interest). Since the expiration of the pause in September 2023, Applicant has pursued both loan consolidation for some of her accrued student loans and loan forgiveness for all of her loans. What loans she has consolidated and what payment terms she has agreed to for her loan consolidations are unavailable. Equally unclear are the forgiveness programs Applicant has applied for and what promise her forgiveness applications hold for her. All that is known at this time is that her loans have been placed in forbearance by her DoE loan servicer with no time table set for lifting the stays.

Possible forgiveness programs utilized by Applicant to obtain loan forgiveness approvals include the Higher Education Relief Opportunities for Students Act (HEROES Act) Executive Order of 2022 (citing to the HEROES Act of 2003). However, this plan has been blocked by the Supreme Court on the grounds that the plan violated the Court's major questions doctrine requiring clear Congressional authorization for programs of substantial economic or political significance. See *Biden v. Nebraska*, 600 U.S. 477, 491-501 (2023).

Following the loss of loan forgiveness on HEROES principles, the Biden Administration pursued a different type of student loan forgiveness: one that is often referred to as the Saving on a Valuable Education (SAVE) plan. Like the earlier HEROES plan, this plan lacked Congressional authorization. Presumably, Applicant's continued forbearance of her student loans by her loan servicer is predicated on the still pendency of DoE regulations designed to fit Applicant's application within the SAVE plan's loan forgiveness benefits.

With a new Administration scheduled to take office in January 2025 and courts who are no longer required to defer to executive agencies when statutory language is ambiguous, the chances of the DoE approving SAVE plan benefits without Congressional approval ebb considerably. See *Logan Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) (overturning *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837 (1984)).

Based on the information supplied by Applicant to date, her chances of surviving likely court challenges to plans covered by her loan forgiveness application are not promising at this time. Without loan forgiveness or payments, both her non-consolidated and consolidated student loans stand to be returned to active collection status.

Moreover, Applicant has not provided any documented evidence of a payment plan or plans in place in the event that her loan forgiveness application is declined. With over \$71,000 in post-pause student loans still in delinquent status, she will need a payment plan or plans that she can safely fit within the modest resource stream currently available to her. Without more evidence from Applicant of the income sources available to her to service her loans should her forgiveness application fail, safe predictions of her ability to manage her student loans in the foreseeable future cannot be made.



To be sure, Applicant has made some post-hearing progress in addressing her federal tax-payment delinquencies for tax years 2022-2023. While not included in the original SOR, these tax payment delinquencies were added by hearing amendment and may be fully considered in assessing Applicant's evidence of extenuation, mitigation, or changed circumstances See ISCR Case No. 20-02787 at 4 (App. Bd. Mar. 9, 2022)

Altogether, Applicant has made payments approximating \$1,200 towards the satisfaction of her federal taxes owed for tax year 2022. Her efforts represent a good-faith start towards the satisfaction of the \$5,672 in delinquent taxes owed for these tax years in issue. However, she has to date made little progress in addressing her delinquent student loans. Currently, while some of her student loans are consolidated; the remainder are not. And, without loan forgiveness, she faces uncertain prospects of ever having her loans restored to current payment status.

### **Whole-person Assessment**

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether her history of student loan defaults and accumulation of delinquent federal taxes are fully compatible with minimum standards for holding a security clearance. With so little demonstration of overall accountability and responsibility in addressing her student loans once they became due, Applicant's credited defense contributions in establishing her clearance eligibility are not enough to overcome her repeated failures or inability to address her student loans over the course of many years.

Overall trustworthiness, reliability, and good judgment have not been established. Based on consideration of all the facts and circumstances considered in this case, it is too soon to make safe predictions that Applicant will be able to undertake reasoned, good-faith efforts to mitigate the Government's financial concerns within the foreseeable future. More time is needed for Applicant to establish the requisite levels of trust, reliability, and judgment necessary to hold a security position or occupy a sensitive position.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

### **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:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.k:  
Subparagraph 1.l:

Against Applicant  
For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Roger C. Wesley  
Administrative Judge