



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-05230
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2017

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

As of May 2014, Applicant had contractual liability for approximately \$111,574 in defaulted student loan debt for his children's college educations. In May 2016, Applicant paid \$14,245 to satisfy a federal student loan in collection, and his daughter paid \$10,000 to settle a loan in collection for \$36,681. Neither Applicant nor his son has addressed a \$55,657 charged-off student loan in collection. Applicant declined an opportunity to settle the debt for his son in 2015 because he had a large tax debt from the sale of a home inherited from his parents and the student loan is not accruing interest on the unpaid balance. Applicant's ongoing disregard of this contractual liability reflects questionable financial judgment. Clearance is denied.

Statement of the Case

On February 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DOD CAF took the action under Executive Order 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 for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On March 13, 2015, Applicant answered the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 4, 2016, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On April 22, 2016, I scheduled a hearing for May 17, 2016.

I convened the hearing as scheduled. Four Government exhibits (GEs 1-4) and five Applicant exhibits (AEs A-E) were admitted into evidence without objection. Applicant Exhibit A consisted of Applicant's statement (AE A) and documentation concerning a federal student loan (AE A-1). The letter forwarding discovery to Applicant was marked as a hearing exhibit (HE 1) for the record but was not entered as an evidentiary exhibit. The Government withdrew SOR ¶ 1.c before the introduction of any evidence. Applicant testified, as reflected in a transcript (Tr.) received on May 27, 2016.

I held the record open after the hearing, initially for one month, for Applicant to supplement the record. On May 17, 2016, Applicant submitted a document that was entered without objection as AE F. Workload considerations delayed the issuance of a decision in this case. On December 8, 2016, I *sua sponte* reopened the record for a status update, if any, on the debt in SOR ¶ 1.a. On December 11, 2016, Applicant responded that he and his son were continuing to address his son's student loans but that they had made no progress toward the debt in SOR ¶ 1.a. On December 12, 2016, Department Counsel responded that the Government had no objection to any documentation showing payments. Applicant's email of December 11, 2016, noting no progress toward the student loan in SOR ¶ 1.a, was admitted as AE F. Applicant submitted no additional evidence by the December 19, 2016 deadline.

Findings of Fact

The SOR alleges under Guideline F that Applicant owed delinquent student loan debt of \$55,657 (SOR ¶ 1.a), \$18,514 (SOR ¶ 1.b), and \$36,681 (SOR ¶ 1.d), and a medical collection debt of \$611 (SOR ¶ 1.e) as of February 2015. Applicant submitted a detailed response to the allegations. He admitted the debts and explained that he and his two children had borrowed "probably over \$200,000" for their educations, and that they had to prioritize which debts to repay. He indicated that he was trying to negotiate a repayment plan for the loan in SOR ¶ 1.a, but that he had begun making monthly payments of \$300 on the federal student loan in SOR ¶ 1.b. Applicant indicated that he and his daughter had made payments to bring the student loan in SOR ¶ 1.d current. Concerning the medical debt in SOR ¶ 1.e, Applicant speculated that it was likely due to a billing error because the provider could not confirm the debt.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 62-year-old defense contractor employee with bachelor's and master's degrees awarded respectively in June 1979 and June 1981. (GE 1; Tr. 37.) He was granted a top secret security clearance around 1994 for his duties in the defense industry. His clearance was renewed 10 years later while he was employed as a vice president of a small defense contracting firm of about 50 employees. (Tr. 32.) He was granted access to sensitive compartmented information (SCI) in October 2008, but was then laid off in February 2009 during a business downturn. In March 2009, he started his present employment as a subcontractor at a university-affiliated research laboratory that contracts with the DOD. His top secret clearance was transferred. (GE 1; Tr. 37-38.)

Applicant and his spouse have been married since June 1980. His spouse had a medical billing business for over ten years until she retired in 2016. (Tr. 39-40.) He and his spouse have a daughter now age 33, who is married and has two children of her own. They also have a son now age 29. (Tr. 40-41.) Applicant and his spouse have lived in their home since November 1998. (GE 1.) They obtained a \$745,000 mortgage loan in September 2003 that they have been repaying on time. As of December 2015, their monthly mortgage payment was \$4,249 on a loan balance of \$544,505. (GEs 2-4.) In December 2003, they obtained a home-equity loan of \$115,000. They paid off that loan and obtained a new home-equity loan for \$200,000 in September 2006. In June 2007, they refinanced for \$250,000. As of February 2014, their line of credit had a balance of \$250,238 and was rated as current. (GEs 2-4.)

Applicant's daughter and son obtained student loans for their college educations, some of which were cosigned by Applicant or his spouse. Applicant also obtained a federal student loan in his name for his son's education. Applicant's son was unemployed for about one year after he graduated from college in 2010, and he could not afford to repay the loans. Applicant's then employer reduced his work hours because of a lack of business to four days a week and then to three days a week. (Tr. 32-33.) Some of the loans went into default, as follows. (GEs 1-4.)

A student loan cosigned by Applicant for \$27,624 in September 2006 for his daughter (SOR ¶ 1.d) was late over 180 days when it was transferred in November 2010. It was placed for collection with a balance of \$38,181. As of January 2014, the balance was \$36,681. (GEs 2-4.)

A joint private student loan obtained by Applicant and his son for \$43,715 in September 2007 (SOR ¶ 1.a) became delinquent in August 2011 and was charged off for \$55,657. (GEs 1-4.) A \$13,000 private student loan, obtained in October 2007 with Applicant as cosigner, was satisfied in April 2013 after the account had been charged off. (GEs 2-4.)

A federal student loan obtained by Applicant for \$14,000 in October 2009 for his son was late over 90 days when it was transferred in July 2011 (SOR ¶ 1.b). As of March 2014, the loan was in collection for \$19,236. (GEs 2-4.)

Applicant and his children gave repayment priority to the student loans with the highest interest rates. (Tr. 33.) A \$30,000 signature student loan, cosigned by Applicant for his son in September 2008, had been delinquent 60 days in February 2011 and April 2012, but the loan was rated as current with a balance of \$34,810 as of February 2014. (GEs 2-4.) As of May 2016, the loan had a balance of \$29,004. Applicant's spouse had cosigned on a \$12,000 student loan for her son for his last semester in college. The loan, which had an interest rate of 10.25%, had been satisfied in full as of February 2016. (AE D.) In March 2012, Applicant's daughter began repaying one of her student loans in her name at \$103 per month. As of late April 2016, she had made 49 monthly payments of \$103 and one payment of \$200. (AE D.)

On February 25, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86) incorporated within an Electronic Questionnaire for Investigations Processing to renew his security clearance eligibility. Applicant listed foreign travel for tourism in June 2006, August 2007, January 2011, August 2011, and January 2013. He responded affirmatively to inquiries concerning any delinquency involving routine accounts and disclosed the delinquent student loans in SOR ¶¶ 1.a, 1.b, and 1.d. Applicant explained that he had cosigned student loans for his children, who could not find jobs when they graduated from college. He also indicated that he was on reduced salary for two years before his previous employer laid off most of its employees in 2009. Applicant indicated that the \$55,657 student loan in SOR ¶ 1.a would be resolved pending agreement with the creditor bank. He estimated the federal student loan debt at \$14,000 (SOR ¶ 1.b) and indicated that it was being repaid in monthly installments. As for the student loan of approximately \$27,624 (SOR ¶ 1.c), Applicant asserted that the loan also was being repaid in monthly installments. Applicant disclosed that another student loan of approximately \$14,000 had been delinquent in October 2010 but was resolved in July 2011. (GE 1.)

As of March 14, 2014, the three delinquent student loans alleged in the SOR totaled approximately \$111,574. Timely payments of \$376 per month were being made by Applicant or his son toward the \$34,810 signature student loan. A medical debt of \$611 had been recently placed for collection (SOR ¶ 1.e). (GE 4.)

On April 21, 2014, Applicant paid \$1,197 toward the federal student loan he obtained in his name for his son's education (SOR ¶ 1.b). He made no further payments until March 5, 2015, when he paid \$300. In April 2015, he made a payment of \$300. (AE A.) Later that month, his income tax refund of \$4,315 was taken and applied to the debt. (Tr. 66.) Applicant made no further payments until May 2, 2016, when he satisfied the defaulted loan with a lump-sum payment of \$14,245. (AE A; Tr. 65-67.)

On November 13, 2014, the collection entity for the student loan in SOR ¶ 1.d offered to settle the \$38,487 balance for \$17,326. Under the settlement terms negotiated

by Applicant's daughter, she or Applicant as cosigner was required to pay \$10,000 by November 14, 2014, followed by 11 consecutive monthly payments of \$666 from December 2014 through October 2015. Applicant left it to his daughter to make the payments, and he was unaware that his daughter had not made all the payments. (Tr. 70, 73.) Payment records show that Applicant's daughter authorized debit payments of \$666 on December 30, 2014, and January 30, 2015, and of \$640 on March 3, 2015. (AE E; Tr. 69.) On May 6, 2016, Applicant's daughter paid \$10,000 toward the student loan (AE B), which was accepted in full settlement of the debt. (AE F.) Applicant's daughter exhausted her savings and borrowed some funds from her brother to make the payment. (Tr. 80.)

Between June 1, 2015, and June 8, 2016, Applicant's son made payments totaling \$23,016 toward his student loans, of which \$6,101 (seven monthly payments of \$377 and six monthly payments of \$577) went toward the signature loan cosigned by Applicant. (AE C.)

As of mid-May 2016, neither Applicant nor his son had made any payments toward the \$55,657 defaulted student loan in SOR ¶ 1.a. In the fall of 2015, the creditor offered to settle the loan on a lump-sum payment of 60% of the balance, but if he settled the debt, Applicant would have been required to report as income on his tax returns the debt amount cancelled by the creditor. (Tr. 35.) In late 2015, Applicant sold an apartment that he had inherited from his parents in approximately 2012. (Tr. 76.) Given the capital gains from the sale of the property for \$600,000, he had to pay \$30,000 in federal income taxes and \$12,000 to \$15,000 in state income taxes for 2015. (Tr. 54-56.) Applicant did not have the funds to pay the additional taxes that would have resulted from cancelling some of the debt. Applicant has not contacted the creditor since the fall of 2015 about the debt. (Tr. 57.) On December 11, 2016, Applicant indicated that neither he nor his children had made any payments on the student loan because it was not incurring any additional interest or penalties and was in collection. He regarded giving repayment priority to the other student loans cosigned for his children as "a prudent approach to mitigate indebtedness." (AE G.)

Applicant believes that the medical collection debt on his record (SOR ¶ 1.e) was incurred for imaging services. The medical provider could not find any record of the debt. (Tr. 74.) Applicant cannot now recall whether he contacted the collection agency. (Tr. 75.)

Applicant's daughter works as a professional photographer. It took some time for her to establish herself as an event photographer. (Tr. 44.) Her spouse is an engineer with a large corporation. He recently graduated from college and has a student loan of his own. (Tr. 79.) Applicant gives his daughter and son-in-law \$1,000 a month to help with their expenses. (Tr. 41, 79.) He had given his daughter \$700 a month in the past. (Tr. 79.) Applicant no longer provides any financial assistance to his son, who works for a large medical record services company. His son's salary doubled in the last year from his starting salary of \$35,000 in 2011. (Tr. 42-43, 81.)

Applicant's annual salary is approximately \$150,000. (Tr. 82.) He takes home around \$2,000 a week. He owns an apartment that he rents out for \$2,500 a month. He paid off the mortgage on that property years ago. After paying taxes and condominium

fees, Applicant realizes about \$1,500 in monthly income from the property. (Tr. 46-47.) Applicant and his spouse have two cars that are paid off. (Tr. 48.) Applicant has about \$160,000 in a savings account from the sale of the apartment inherited from his parents. He paid off the \$250,000 mortgage on the property and a \$250,000 home-equity loan on his own home. (GE 2; Tr. 48-52.) As of December 2015, his home-equity loan had a balance of only \$764. (GE 2.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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 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 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. Section 7 of Executive Order 10865 provides that 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

The security concerns about financial considerations are set forth in AG ¶ 18:

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 and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

As of May 2014, when Applicant applied to renew his security clearance eligibility, he was legally liable to repay \$55,657 in charged-off student loan debt cosigned for his son (SOR ¶ 1.a), \$19,236 in federal student loan collection debt in his name obtained for his son's education (SOR ¶ 1.b), and \$36,681 in student loan debt cosigned for his daughter (SOR ¶ 1.d). Applicant knew when he cosigned on the student loans for his son and daughter that he would be legally liable if they defaulted in their payments. Applicant's default of the federal student loan obtained in his own name is inconsistent with the sound judgment that must be expected of persons holding DOD security clearance eligibility. Concerning the \$611 in medical collection debt on his credit record, Applicant believes that it may be for imaging services, but the medical provider no longer has any record of the debt. The DOHA Appeal Board has held that adverse information from a credit report is normally sufficient to meet the substantial evidence standard to establish a debt. *See, e.g.,* ISCR Case No. 14-03612 (App. Bd. Aug. 25, 2015). Applicant has not disproved his repayment liability for the debts in the SOR. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Mitigating condition AG ¶ 20(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," cannot fully apply. Applicant was initially unaware that his daughter was not making the payments for the student loan in SOR ¶ 1.d under the terms of a settlement negotiated in 2014. However, AG ¶ 20(a) has no applicability to Applicant's default of the student loan that he obtained in his name for his son's education (SOR ¶ 1.b) or his ongoing disregard of his contractual repayment liability for his son's student loan in SOR ¶ 1.a.

AG ¶ 20(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances," is partially established in that his children initially had difficulty

finding employment when they graduated from college. Applicant also did not have any control over his daughter's decision to pursue a photography career that may not be lucrative. On the other hand, Applicant has also been consistently employed at a salary of \$150,000 a year since 2009. Whether or not Applicant has a credible moral argument to hold his children responsible for their educations, he is legally contractually liable for the student loans that he obtained individually or cosigned. The evidence does not show that his children had any legal liability for the federal student loan in SOR ¶ 1.b. Applicant made only two payments in 2015, of \$300 each in March and April, on the student loan despite being on notice by the SOR that the DOD was concerned about his default. A \$4,315 payment was made on April 24, 2015, because his tax refund was taken and applied to the debt. It is difficult to find that Applicant acted responsibly when he received a financial windfall from the sale of his parents' home in late 2015, but waited until May 2016 to satisfy his parent federal student loan in SOR ¶ 1.b and made no progress toward resolving the student loan in SOR ¶ 1.a.

AG ¶ 20(c), "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control," applies in mitigation of the student loan delinquencies in SOR ¶¶ 1.b and 1.d, which were fully satisfied (SOR ¶ 1.b) or settled (SOR ¶ 1.d), albeit belatedly in May 2016. Applicant has less of a case for mitigation under AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." The evidence strongly suggests that Applicant was motivated to satisfy his parent student loan because of his upcoming security clearance hearing. AG ¶ 20(d) has no applicability to the student loan in SOR ¶ 1.a. It is unclear whether his son can afford to make monthly payments toward the \$55,657 debt, given the student loans he is already repaying. Between June 1, 2015, and June 8, 2016, Applicant's son made payments totaling \$23,016 toward his student loans, of which \$6,101 (seven monthly payments of \$377 and six monthly payments of \$577) went toward a signature loan cosigned by Applicant. Applicant has \$160,000 remaining from the sale of his parents' home after paying off the mortgage on the sold property and a home-equity loan on his own residence. Applicant appears to have the funds to settle the student loan for his son or to make payments for his son and then require his son to repay him if he wants to hold his son responsible for his own education. Instead, Applicant has continued to pursue his plan to assist his children with their other loans before repaying the delinquency in SOR ¶ 1.a because interest is not continuing to accrue on that debt. Additionally, while the medical collection debt in SOR ¶ 1.e would not alone be sufficient to warrant revocation of his security clearance eligibility, Applicant has not made any payments to resolve it. The medical provider may no longer have record of the debt because it was placed for collection. Applicant has not presented any documentation of efforts to address the debt with the collection entity.

The security clearance adjudication is not aimed at collecting an applicant's personal debts. Rather, it involves an evaluation of an applicant's judgment, reliability, and trustworthiness in light of the security guidelines in the Directive. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). In evaluating Guideline F cases, the Appeal Board has established that an applicant is not required to pay off every debt in the SOR:

The Board has previously noted that the concept of a meaningful track record necessary includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrated that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that the plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant was placed on notice as of his hearing, if not in February 2015 on receipt of the SOR, that the \$55,657 in defaulted student loan debt raises concerns about his financial judgment and a risk of vulnerability to coercion. While his decision to give priority to other loans accruing interest may be financially advantageous to him and his son, it does not justify his ongoing disregard of his repayment obligation. The financial considerations concerns are not fully mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).¹ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of the evidence to determine if a nexus exists between established facts and a legitimate security concern. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990). Applicant

¹ The factors under AG ¶ 2(a) are as follows:

(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.

has had the privilege of security clearance eligibility, including at a high level, for several years. He belied the confidence placed in him by then defaulting on a federal student loan and not making any payments on the loan until it became a security issue. By continuing to act primarily in his self-interest with respect to paying loans accruing interest while ignoring the student loan in SOR ¶ 1.a, Applicant does not inspire confidence that he can be counted on to fulfill his security obligations when they may prove personally onerous or inconvenient. For the reasons noted, I conclude that it is not clearly consistent with the national interest to continue Applicant's security clearance eligibility.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Withdrawn
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge