



**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. 15-03249

**Appearances**

For Government: Benjamin Dorsey, Esquire  
For Applicant: *Pro se*

03/24/2017

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On November 18, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated response, Applicant admitted the four allegations raised under Guideline F and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on June 30, 2016. That day, a hearing was scheduled for August 17, 2016. It was convened as scheduled.

The Government offered three documents, which were accepted without objection as exhibits (Exs.) 1-3. Applicant offered testimony. The record was held open through September 1, 2016, in the event the parties wished to submit additional material. That date was subsequently moved to October 3, 2016. In the interim, the

transcript (Tr.) was received on August 25, 2016. Between August 31, 2016, and October 3, 2016, Applicant provided two documents in a series of e-mails. The chain of e-mails was accepted as Ex. A, while the documents were accepted as Exs. B-C without objection. With no further emails submitted by October 17, 2016, the record was then closed.

### **Findings of Fact**

Applicant is a 39-year-old system network analyst employed by a defense contractor. He has worked for the same employer for over 11 years. He has maintained a security clearance for about seven years. Applicant earned a bachelor of science in chemical engineering and a master's degree in business and finance. He is married and has two preschool children. He has not received financial counseling.

Applicant has a net income of about \$900 every two weeks. His wife generates about \$3,000 every two weeks. She also has outstanding student loans. (Tr. 33) They have about \$6,000 in savings. Applicant has a retirement with a balance of about \$150,000; the balance maintained in his wife's retirement account is unknown. Applicant has a monthly mortgage payment of \$3,145 and a \$320 monthly car loan payment on one of their three vehicles. (Tr. 19) At the end of the month, he has a net remainder of about \$800, which he usually applies to the household coffers. He recently opened an education savings fund for his son, which entails an annual \$550 contribution. Overall, the couple lives within their means.

At issue are multiple student loans acquired by Applicant in pursuit of post-graduate work he completed in 2010. The loans were in forbearance through 2013. (Tr. 36) The delinquent loans were mostly opened between 2007 and 2009. He attributed their past-due status to a weak job market at graduation, insufficient salary, and the addition of two children to his family. (SOR Response) The loans admitted in SOR allegations 1.a-1.c amount to approximately \$122,500. He believes that all seven student loans at issue have been consolidated and are in repayment. (Tr. 38)

During the hearing, Applicant discussed various strategies he has undertaken to rehabilitate both privately held and publicly administered student loans. He included in his discussion private student loans that are delinquent, but not at issue in the SOR. (Tr. 21-23) With interest, they amount to about \$88,000 beyond the sums reflected in the SOR. Applicant stated that garnishment payments on these loans have been initiated.

Due to recent changes in the law, Applicant is aiming to have all of his student loans, both private and publicly administered, consolidated and moved out of the garnishment status imposed in early 2016.<sup>1</sup> (Tr. 26, 35-36) Applicant's financial information is drawn from a student loan rehabilitation request form dated September 1, 2016. The form was created by an intermediary servicer for the U.S. Department of

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<sup>1</sup> When asked whether he had made any student loan payments between the time the loans came out of forbearance status and when they went into garnishment in early 2016, Applicant stated: "There had been some due to tax returns, or tax garnishments and there have been some payments, yes." (Tr. 37)

Education (ED). That paperwork reflects a total monthly income of \$12,926 and expenses amounting to \$10,129, including \$1,217 in Federal student loan payments.

At issue in SOR allegation 1.b is a loan loan opened August 2009. It is presently with a loan servicing entity (LSE). It represents a past-due amount of \$3,543 on a total loan balance of \$45,515. No documentary evidence was presented directly linking any efforts by Applicant to address this account. Applicant is restricted in his options for consolidating his student loans because many of the currently available options are with entities that will not work with individuals who have had a default. (Tr. 42)

The three delinquent accounts at 1.c are serviced by Nelnet Loan Services (NLS). They involve past-due sums of \$2,574, \$1,098, and \$1,844. They were opened between 2007 and 2008. The credit report at Ex. 3 shows that they are subject to scheduled payments of \$367, \$156, and \$263, respectively. The only documentary evidence provided by Applicant clearly regarding these accounts is a three-page excerpt, without letterhead, showing \$70 payments made every other week to NLS made between September 2014 and October 2016. (Ex. C) His name is not noted, nor is there any reference to an account number or numbers. The payments are drawn from a major bank. There is a four digit number following each entry noting NLS, but the significance of the number is unclear.

Applicant was unable to confirm whether his current package of loans with ED, the source of the student loans noted at SOR allegation 1.a, includes any of the other student loans (ie. NLS) noted. (August 31, 2016, e-mail at Ex. A) He wrote that the ED servicer "is unable to provide an email with the full account summary as requested during my hearing as they only have records of when they received accounts for rehabilitation." Applicant has no correspondence to offer showing the progress on any of his various student loans since their inception. He was awaiting correspondence from the ED servicer "regarding details of the 9 months financial arrangement program to get loans back in good standing with garnishment being removed in December with a monthly payment of \$433 instead of \$2195 and my account is transitioned to a new servicer. They adjusted my payment based on my income." (August 31, 2016, e-mail at Ex. A) Any paperwork including such information was not offered into evidence.

By email of September 28, 2016, Applicant referenced "the current agreement" for rehabilitating his Federal student loans, but not those serviced by NLS. He wrote that it removes his Federal loans from default into good standing and consolidates them with a new lender after his final December 28, 2016, payment. No documentation was offered, however, reflecting Applicant's loans were thusly converted.

Attached to that exchange is the September 1, 2016, rehabilitation request form noted above. It references six accounts for inclusion in the rehabilitation program. They include the three accounts at issue in SOR allegation 1.a (#2438, #2439, and #2439), reflecting balances of \$17,487, \$42,352, and \$11,574. Unsigned and incomplete, the September 1, 2016, form contains two pages of instructions for returning the completed form; two pages for Applicant to provide financial information; two pages of applicable

terms and methods of loan rehabilitation acceptance; an address to send the completed form; notices; a checklist of required information and materials for rehabilitation financial disclosure; and a vehicle certification. (Ex. B) There is no express indication in the documentation that it has been received, completed, or that the rehabilitation process was initiated.

During the post-hearing email exchanges with the Government, Applicant also wrote that his NLS loans were being held by a corporation, to which his first deduction had recently been paid. He also noted terms of an agreement with that entity. No documentary evidence reflecting that payment or agreement, however, was submitted.

In addition, at SOR allegation 1.d, Applicant has four accounts placed for collection concerning traffic or parking tickets for \$300, \$200, \$105, and \$50, respectively. One of the smaller debts may have been for lack of an inspection sticker on the vehicle's window or driver's plate. (Tr. 49) Applicant has been in dispute with the governmental entity over these accounts "for years." (Tr. 43) He did not go to court to contest the tickets. With one citation, he sent it back to the issuer with a request the ticket be reconsidered, but no response was received. (Tr. 44) Applicant did not initially receive information regarding two tickets because they were misrouted. The week before the hearing, he went to the central office personally. He was directed to a form to complete to express his disputes. Applicant provided no documentary evidence, however, regarding any of these tickets or any disputes filed.

## **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 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(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 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, 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. The Government reposes a high degree of trust and confidence in those it grants access to classified information. Decisions include consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Under Section 7 of Executive Order 10865, 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 *a/so* EO 12968, Section 3.1(b).

## **Analysis**

### **Guideline F, Financial Considerations**

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, Applicant admitted the allegations concerning approximately \$120,000 in delinquent student loan account balances and collection efforts for about \$655 in government-issued tickets and citations. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

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;

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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Regarding the multiple delinquent debts at issue, the documentary evidence offered shows little to no progress on their being addressed or resolved. Generally, Applicant provided no facts that showed the creation of these delinquent debts was necessarily based on factors outside of his control and that he acted responsibly under the circumstances at the time. At best, his claim that misrouting was the reason for his not having received two of the tickets at issue could raise AG ¶ 20(b) in part.

Applicant has not received financial counseling. Moreover, he did not provide documentary evidence reflecting efforts to dispute any of the accounts at issue. The student loan rehabilitation application evidences that Applicant had access to a necessary form to implement his plan to rehabilitate and consolidate his loans accounts. In the state presented, however, it does not demonstrate any progress to that end; it certainly does not reflect the notable progress suggested by Applicant in his emails.

Finally, while Applicant's documentation regarding NLS payments shows regular \$70 payments being made to NLS, the documentary evidence submitted fails to reflect the identity of the payer or, more importantly, the accounts at issue. The absence of this necessary information is fatal inasmuch as such information is necessary to link the accounts at issue to the efforts shown. Applicant's proffered documents, however, fail to provide sufficient evidentiary proof of progress. Under these facts and given the documentary evidence presented, no other mitigating conditions apply.

### **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(a). 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 incorporated my comments under

the guideline at issue in my whole-person analysis, as well as relevant and available facts regarding the Applicant as an individual. Some of the factors in AG ¶ 2(a) were previously addressed, but some warrant additional comment.

Applicant is a credible 39-year-old system network analyst who has worked for the same employer for over 11 years. He is married with two young children. Applicant completed his master of business and finance degree in 2010. As a result he acquired student loans, which were deferred until 2013. Timely payment apparently became difficult. Intermittent payments on the loans, and tax return proceeds went to the student loan balances. Later, garnishments were imposed on the past-due accounts.

In both his testimony and subsequent e-mails, Applicant described efforts he has taken and progress he has made toward rehabilitating and consolidating his student loans. The documentary evidence he provided, however, does not depict the efforts and progress described. As well, no documentary evidence was offered regarding the tickets and citations at issue. This process demands corroborating documentary evidence. It is necessary to support a case in mitigation and enable an applicant to carry his burden. Here, without more, financial considerations security concerns remain unmitigated.

### **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
Subparagraphs 1.a-1.d:	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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge