



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



In the matter of: )  
)  
) ISCR Case No. 16-01832  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

09/22/2017

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**Decision**

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HEINY, Claude R., 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. He cosigned on a student loan for his niece, which was not repaid in accordance with the loan agreement. He failed to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on August 20, 2016, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On August 29, 2016, Applicant answered the SOR and elected to have the matter decided without a hearing. On September 28, 2016, Defense Office of Hearings and Appeals

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<sup>1</sup> 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 (Sept. 1, 2006 AG) effective within the DoD on September 1, 2006.

(DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM). The FORM contained nine attachments (Items). On October 7, 2016, Applicant received a copy of the FORM, along with notice of his opportunity to object to the Government's evidence and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. He had 30 days from his receipt of the FORM to submit any additional information in response to the FORM. The response was due on November 6, 2016. No response or other additional information was received from Applicant. On August 1, 2017, I was assigned the case.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>2</sup>

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted cosigning on his niece's student loan account. I incorporate Applicant's admission as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact.

Applicant is a 57-year-old property control officer who has worked for a defense contractor since December 2006, and he seeks to retain a top-secret security clearance. (Item 5)

Applicant's February 2016 credit report indicates \$19,632 was charged off on an educational debt incurred in September 2006. (Item 7) The amount written off is the same as the high credit on the delinquent obligation. The terms of the loan required \$180 monthly payments for 199 months. (Item 7)

In September 2010, Applicant had a personal subject interview (PSI) with a defense investigator during which the SOR delinquent obligation (SOR 1.a, \$19,632) was discussed. (Item 8) Applicant stated that in 2005 and 2006 he had cosigned on his niece's student loans. He indicated he had been working with Sallie Mae to have the matter resolved and the debt obligations became the full responsibility of his niece. (Item 8) He provided no documentation corroborating what transpired between him and Sallie Mae. At some undisclosed time, the loans were in a deferral status. He admitted cosigning on the loans, but did so not knowing his niece would default on the notes. At that time, there were five student loans totaling \$54,405. An August 2010 credit report indicated all five notes had been 180 days or more past due and the latest reported delinquencies on the five loans had been two months earlier in June 2010. (Item 6)

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<sup>2</sup> Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at [http://ogc.osd.mil/doha/5220-6\\_R20170608.pdf](http://ogc.osd.mil/doha/5220-6_R20170608.pdf).

In a March 2016 PSI, Applicant was questioned about the \$19,632 charged off student loan account. He admitted that he had cosigned the student loan and had been previously contacted about nonpayment. He indicated that he would contact his niece and make sure that she was repaying the delinquent loan. (Item 8) No documents were presented requesting the holder of the note to release him, as cosigner, from the student loan.

In Applicant's SOR response, he provided a letter<sup>3</sup> stating the creditor had agreed to accept his niece's offer to pay \$100 monthly beginning on September 16, 2016. (Item 4) He failed to provide any documentation corroborating that any payments have been made in accord with the offer.

Applicant was informed in the FORM that the delinquent obligation remains outstanding and that there was no evidence payments had been made. The FORM stated:

. . . you shall have 30 days from the receipt of this information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate . . . If you do not file any objections or submit any additional information within 30 days of receipt of this letter, your case will be assigned to an Administrative Judge for a determination based solely on this file of relevant material. (FORM)

No response to the FORM was received from Applicant. He did not provide any documentation as to payment on or the current status of the delinquent obligation.

### **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 must 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudication process is an examination of a sufficient period and a careful weight of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept.

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 national security." In reaching this decision, I have

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<sup>3</sup> The September 1, 2016 letter is dated two weeks after the August 20, 2016 SOR.

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 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 Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination of 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**

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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 . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed-upon

terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant cosigned on his niece's student loans. During his September 2010 and March 2016 PSIs, he was questioned about the \$19,632 delinquent obligation on which he had cosigned. AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" and "(c) a history of not meeting financial obligations."

The Government's evidence and Applicant's own admissions raise security concerns under AG ¶¶ 19(a), 19(b), and 19(c). The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. September 22, 2005))

Five of the seven Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(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.

In 2005 and 2006, Applicant cosigned on his niece's student loans. Cosigning is the act of signing for another person's debt which legally obligates the cosigner to make payment on the debt if the primary debtor defaults. A cosigner is liable for the entire balance in the event of default. Once a person cosigns they are tied to the debt for as long as it is owed. A lender is under no obligation to release the cosigner from liability until the entire debt is paid.

Applicant is liable on the delinquent SOR obligation. He has provided no documentation corroborating that Sallie Mae or the current holder of the note has released him from legal repayment liability on the loans. He provided a letter from the current holder of the debt that accepted his niece's offer to make payment on the debt. He provided no documents showing he had requested that the holder of the note release him, as cosigner, from the note.

Applicant has shown the creditor accepted an offer to settle the delinquent obligation. There is no showing that payment has been made in accord with the agreement. Without payment showing compliance, an offer is merely a letter of intent and, as such, fails to establish a good-faith effort to repay the delinquent obligation.

A settlement offer, if accepted, is a promise to take action in the future. A promise to take remedial steps in the future does not constitute evidence of demonstrated reform and rehabilitation. See, e.g., ISCR Case No. 96-0544 (May 12, 1997) at p. 5 (promise to take remedial action in future, however credible and sincere, not evidence of actual rehabilitation).

An applicant is not required to be debt-free or to develop a plan for paying off all debts immediately or simultaneously, but he is required to act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). Applicant has not presented any evidence of significant actions taken in implementation of a reasonable repayment plan.

Applicant provided no evidence of what responsible steps he took to pay or resolve this obligation other than to show that his niece offered to pay \$100 per month on the debt, which was accepted. The delinquent obligation did not occur under unusual conditions, and the failure to timely pay those obligations is not an unusual condition unlikely to recur. Applicant has known about his niece's default on the loan for several years and has made no payments nor ensured that his niece made any payments. This delinquent obligation casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's niece failed to repay the student loans, which may be beyond his control, but that is the risk he took as a cosigner. He has not acted responsibly under the circumstances. AG ¶ 20(b) does not apply. There is no evidence of financial counseling or clear indications that the delinquent obligation is being resolved or is under control. AG

¶ 20(c) does not apply. There is no showing of Applicant having made good-faith payments towards his delinquent obligations or evidence to establish that he is executing a reasonable ongoing plan to pay or resolve a sizeable debt for which he is legally liable and which continues to adversely affect his credit. Without evidence of payment, a good-faith effort to repay is not established. AG ¶ 20(d) does not apply.

Applicant asserts this debt is his niece's debt and not his debt. AG ¶ 20(e) does not apply, because as a cosigner he cannot successfully dispute the legitimacy of the delinquent obligation. He has not shown any documentation corroborating his efforts to have the holder of the note release him from liability or that he has been released from liability.

### **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(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.

Under AG ¶ 2(d), 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.

Applicant cosigned on a number of student loans. By cosigning he agreed to pay the debt if his niece defaulted on the loans. Those loans were not paid. Applicant, as cosigner, is responsible for payment of the debt.

Applicant has been aware of the Government's security concern about this delinquent obligation since his September 2010 interview when he was specifically confronted about the student loans debt. Additionally, he was again questioned about the delinquent obligation during his March 2016 interview. The August 2016 SOR and September 2016 FORM put him on notice of the Government's concern about the delinquent student loan obligation. The FORM specifically informed him there was no evidence that payment had been made on the debt. There is no evidence he has contacted the holder of the note. He asserted he had previously contacted the holder of the note, but provided no documentation regarding his past efforts to address this delinquent debt.

In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. By failing to provide such information, and in relying on only the limited response in his SOR Answer, Applicant failed to mitigate the financial considerations security concerns.

The issue is not simply whether all the delinquent obligations have been paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(e) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations.

### **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, Financial Considerations: AGAINST APPLICANT

Subparagraph 1.a: 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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CLAUDE R. HEINY II  
Administrative Judge