



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 16-01165
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

01/02/2018

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on his federal student loans obtained for \$47,508. While the loans were rehabilitated and in forbearance until mid-January 2017, there is no evidence of any payments on his student loans since their rehabilitation or of any payments on \$7,783 in delinquent credit card debt. Low income caused him to default on his financial obligations, but he has yet to show a track record of debt repayment despite now having the income to make payments. Clearance is denied.

Statement of the Case

On October 3, 2016, 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 (EO) 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 November 3, 2016, Applicant answered the SOR allegations and requested a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government submitted a File of Relevant Material (FORM), consisting of eight exhibits (Items 1 through 8). DOHA forwarded a copy of the FORM to Applicant on December 22, 2016, and instructed him to respond within 30 days of receipt. Applicant received the FORM on January 19, 2017. He submitted his response on February 19, 2017, consisting of his statement (AE A), two paystubs for him (AEs B-C), a household budget (AE D), two paystubs for his spouse (AEs E-F), and his parents' joint federal and state income tax returns for tax year 2011 (AE G). On February 26, 2017, Department Counsel indicated that the Government had no objection to Applicant's exhibits.

On October 1, 2017, I was assigned the case to determine whether it is clearly consistent with national security to grant or continue a security clearance for Applicant. On review of the case file, I accepted in evidence AEs A-G.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.¹

Evidentiary Ruling

Department Counsel submitted as Item 8 a summary of an unsworn enhanced subject interview of Applicant conducted on January 8, 2016. This document was part of the DOD Report of Investigation (ROI) in Applicant's case. Under ¶ E3.1.20 of the Directive, a DOD personnel background report of investigation may be received in evidence and considered with an authenticating witness, provided it is otherwise admissible under the Federal Rules of Evidence. The interview summary did not bear the authentication required for admissibility under ¶ E3.1.20.

In ISCR Case No. 15-01807 decided on April 19, 2017, the Appeal Board held that it was not error for an administrative judge to admit and consider a summary of personal subject interview in the absence of any objection to it or any indication that it contained inaccurate information. The applicant in that case had objected on appeal to the accuracy of some of the information in a FORM, but had not objected to the interview summary or indicated that it was inaccurate in any aspects when she responded to the FORM.

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case.

Like the applicant in ISCR Case No. 15-01807, Applicant was provided a copy of the FORM and advised of his opportunity to submit objections or material that he wanted the administrative judge to consider. In a footnote, the FORM advised Applicant of the following:

IMPORTANT NOTICE TO APPLICANT: The attached summary of your Personal Subject Interview is being provided to the Administrative Judge for consideration as part of the record evidence in this case. In your response to this File of Relevant Material (FORM), you can comment on whether [the] PSI summary accurately reflects the information you provided to the authorized OPM investigator(s) and you can make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate. Alternatively, you can object on the ground that the report is unauthenticated by a Government witness. If no objections are raised in your response to the FORM, or if you do not respond to the FORM, the Administrative Judge may determine that you have waived any objections to the admissibility of the summary and may consider the summary as evidence in your case.

Concerning whether Applicant understood the meaning of authentication or the legal consequences of waiver, Applicant's *pro se* status does not confer any due process rights or protections beyond those afforded him if he was represented by legal counsel. He was advised in ¶ E3.1.4 of the Directive that he may request a hearing. In ¶ E3.1.15, he was advised that he is responsible for presenting evidence to rebut, explain, or mitigate facts admitted by him or proven by Department Counsel and that he has the ultimate burden of persuasion as to obtaining a favorable clearance decision. While the Directive does not specifically provide for a waiver of the authentication requirement, Applicant was placed on sufficient notice of his opportunity to object to the admissibility of the interview summary, to comment on the interview summary, and to make any corrections, deletions, or updates to the information in the report. He was advised that if he did not respond, the interview summary may be considered as evidence in his case. Applicant did not state any concerns or objections to the information in the PSI when he responded to the FORM. I cannot presume without any evidence that Applicant failed to understand his due process rights or obligations under the Directive or that he did not want the summary of his interview considered in his case. It is reasonable to conclude that he read the FORM footnote and waived any objection to the interview summary. Accordingly, I accepted Item 8 in the record, subject to issues of relevance and materiality in light of the entire record, including Applicant's admissions to some of the delinquent debts alleged in the SOR.

Findings of Fact

The SOR alleges under Guideline F that, as of October 3, 2016, Applicant was in default on \$38,944 in student loan debt (SOR ¶¶ 1.a-1.e) and delinquent on five other accounts totaling \$7,822 (SOR ¶¶ 1.f-1.j). When he answered the SOR (Item 3), Applicant denied that he was indebted on his federal student loans as alleged. He explained that he had completed a nine-month loan rehabilitation program. He admitted owing the delinquent debts in SOR ¶¶ 1.f-1.g and 1.i-1.j, but indicated that he now had the income to make

payments on the four past-due accounts. Applicant denied the \$39 utility service debt alleged in SOR ¶ 1.h because it had been paid in full as of January 20, 2016.

After considering the FORM, which includes Applicant's response to the allegations as Item 3, and AEs A-G, I make the following findings of fact.

Applicant is 34 years old, married, and has a two-year-old daughter. Born abroad, he immigrated to the United States as an infant in 1983. He became a U.S. naturalized citizen in June 2003 on his own application. He has a bachelor's degree conferred in June 2012 from a polytechnic university. He has worked as a research engineer for his defense-contractor employer since June 2015. (Item 4.)

Applicant paid for his undergraduate education in part through federal student loans. Between March 2008 and September 2011, he obtained ten federal student loans totaling approximately \$47,508. (Items 3, 5.) His parents could not afford to pay for his college. His father was a maintenance worker who held three part-time jobs, including at a golf course, and his mother was unemployed. His parents' federal adjusted gross income for 2011 was only \$21,648. (AE G.)

Applicant and his spouse married in July 2012. Applicant was unemployed that summer. From September 2012 to June 2015, he worked as a manufacturing engineer for an aerospace company. There is no evidence that he needed a security clearance for that employment. (Items 4, 8.) Applicant's income was insufficient to cover all of his financial obligations, and he defaulted on his federal student loans as well as on some credit cards. (Items 5-8.)

On May 30, 2015, Applicant entered into an agreement to rehabilitate his ten federal student loans, which included the loans in SOR ¶¶ 1.a-1.e. Based on his reported income, he was obligated to pay only \$5 per month for nine months to remove his loans from default. (Item 3.)

In June 2015, Applicant began his defense-contractor employment. On June 9, 2015, he completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to inquiries concerning any delinquency involving routine accounts, Applicant disclosed that he owed approximately \$58,693 in defaulted federal student loan debt. He attributed his delinquency to a period of unemployment and being the sole financial provider for his household with two dependents (spouse and daughter). Although his student loans were in default, he had established a rehabilitation program, and he submitted the first of his monthly installment payments toward rehabilitating his loans. He disclosed no other past-due debts. (Item 4.)

A check of Applicant's credit on June 25, 2015, revealed that he also owed charged-off credit card debts of \$1,681 from February 2010 (SOR ¶ 1.i) and \$416 from September 2012 (SOR ¶ 1.g) and credit card collection debts of \$4,920 from April 2009 (SOR ¶ 1.j) and \$766 from July 2009 (SOR ¶ 1.f). In May 2015, Applicant had obtained a car loan for

\$19,980, to be repaid at \$344 per month. He was making timely payments of \$192 per month on another car loan obtained for \$11,484 in April 2014. (Item 5.)

On January 8, 2016, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). About his delinquent student loans, Applicant indicated that he had not been able to make any payments because of low-paying jobs. He was uncertain about the amount due on his student loans and provided only an estimate on his SF 86. He expressed an intention to apply for forbearance of his student loans and to work on a future payment plan for the loans. He denied recall of any other financial delinquencies. At the conclusion of his interview, he was informed about the negative credit card accounts on his record. He acknowledged three credit card debts (the credit card debt in SOR ¶ 1.f under the name of the original creditor, the debt in SOR ¶ 1.i, and a retail charged-off debt not alleged), which he incurred in college for miscellaneous purchases. He indicated that he would contact his creditors to arrange repayment plans. He did not recognize the debt in SOR ¶ 1.j. (Item 8.)

As of March 2016, Equifax was reporting that Applicant had five student loans in forbearance for \$54,908. (Item 6.) A more recent credit report of December 2016 showed that his federal student loans were in deferment for \$64,025. (Item 7.) Available loan rehabilitation documents show that Applicant's loans would no longer be in forbearance on January 20, 2017. (Item 3.) The file does not shed any light on the amount of his scheduled payments for his student loans when they came out of deferment.

Also as of March 2016, the \$766 credit card collection debt (SOR ¶ 1.f), the \$416 charged-off credit card debt (SOR ¶ 1.g), and a \$39 collection debt (SOR ¶ 1.h) were reported as past due. Available documentation shows that the \$39 debt was paid in 2016. (Item 3.) Although the consumer credit debts in SOR ¶¶ 1.i and 1.j were no longer on his credit record (Item 6), Applicant had made no payments on them or on the debts in SOR ¶¶ 1.f and 1.g as of late October 2016. (Item 3.)

Applicant and his spouse purchased their home in June 2016. They obtained a joint 30-year conventional mortgage loan for \$324,022. As of November 2016, the loan was being repaid on time at \$2,205 per month. In August 2016, they opened a joint credit card account with a \$2,000 credit limit. As of November 2016, the account had a \$1,296 balance and was rated as current. In October 2016, Applicant opened a credit-card account which had a current balance of \$716. He was also repaying his May 2015 car loan according to terms. The car loan obtained in April 2014 was paid off in October 2015. (Item 7.)

In response to the SOR, Applicant admitted on October 28, 2016, that he had made no payments on the delinquent accounts in SOR ¶¶ 1.f, 1.g, 1.i, and 1.j. However, he indicated that his household income has almost doubled with his spouse obtaining employment, that he is now able to pay off the debts, and that he is in the process of establishing repayment plans for the four debts. (Item 3.)

Applicant received the FORM on January 19, 2017, and he learned that the Government was concerned about his willingness to repay his student loans, given that he had made payments totaling only \$45 on the loans, and that the Government had issues with the lack of evidence concerning efforts to resolve his credit card delinquencies. Applicant indicated in response on February 19, 2017,² that he had become more financially responsible since graduating from college and becoming employed. (AE A.)

As of February 2017, Applicant's take-home pay was approximately \$1,800 every two weeks. (AEs B-C.) His spouse's take-home pay was \$1,906 for 80 hours. (AEs E-F.) Their household budget showed \$3,502 in discretionary income based on gross earnings. Their monthly household bills include \$2,205 for the mortgage loan, \$700 for child care, \$118 for mobile phones, \$433 in utility costs (water, trash, electricity, and gas), \$344 for his car payment, and \$560 toward their two new credit cards. Their budget did not account for grocery costs, clothing, or for personal care expenses for himself, his spouse, or his daughter. (AE D.) It also did not reflect any payments toward his old credit-card delinquencies or student loans. They were paying \$3,880 every trimester to a different university than Applicant attended, although it is unclear whether it was for tuition or student loans.

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(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant

² The date of his statement, "19 February, 2012," is an obvious error, given Applicant referenced his home loan, which he obtained in June 2016.

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 EO 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 articulated in AG ¶ 18:

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. 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 or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The Government met its burden of establishing a *prima facie* case for disqualification because Applicant defaulted on his student loans obtained between March 2008 and September 2011 for approximately \$47,508. Four credit card debts totaling \$7,783 were placed for collection or charged off. Three disqualifying conditions under AG ¶ 19 are implicated: AG ¶ 19(a), “inability to satisfy debts;” AG ¶ 19(b), “unwillingness to satisfy debts regardless of the ability to do so,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

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

reasonably apply. His student loans were in default status until early 2016. His failure to make any effort to address his old credit card delinquencies, despite having the income to make some payments, constitutes a persistent pattern of questionable financial judgment.

Applicant's delinquencies were caused largely by insufficient income, which is a circumstance contemplated within AG ¶ 20(b). There has been no activity on the account in SOR ¶ 1.f since July 2009 when the creditor placed Applicant's account for collection for \$766. Likewise, the \$4,920 debt in SOR ¶ 1.j and the \$1,681 debt in SOR ¶ 1.i became delinquent when Applicant was in college. Applicant was unemployed during the summer before his account in SOR ¶ 1.g was charged off. Absent a hardship deferment, he would have been required to start repaying his student loans in 2013. He was employed as a manufacturing engineer at that time, but there is no evidence that his spouse was contributing to the household income. AG ¶ 20(b) has some applicability. It provides:

(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.

AG ¶ 20(b) also requires that an individual act responsibly under the circumstances. Applicant began the process of rehabilitating his student loans before he applied for a security clearance. Shortly thereafter, he started his present employment. The file contains no information about his starting wage or his expenses at the time. During his January 2016 subject interview, Applicant was reminded of some credit card delinquencies, including the undisputed debts in SOR ¶¶ 1.f and 1.i. He indicated at that time that he would contact the creditors and arrange repayment terms. By late October 2016, Applicant's and his spouse's household income had doubled because his spouse had become employed. He indicated that he was in position to make the payments necessary to remove his old credit card debts from collection status. He also explained that he was in the process of communicating with his creditors. There is no proof that he had any repayment plans in place for those debts as of February 2017 despite a claimed discretionary monthly household income exceeding \$3,000. His household budget did not include any payments for his student loans or his credit card delinquencies. Applicant has not acted fully responsibly with regard to addressing these legitimate debts.

Applicant's rehabilitation of his student loans is considered a good-faith effort to address his default of his student loans. AG ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," has some applicability. However, the evidence falls considerably short of establishing AG ¶ 20(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." Applicant has no track record of payments toward his considerable student loan balances (\$64,025 as of October 2016) beyond \$45 paid over nine months to rehabilitate them. Neither AG ¶ 20(c) nor AG ¶ 20(d) apply in mitigation of his ongoing disregard of his old credit card debts.

Applicant's financial situation has improved. He and his spouse obtained a \$324,002 mortgage loan in June 2016, and he has made his car payments on time since he obtained a loan for \$19,980 in May 2015. I cannot ignore Appeal Board precedent, which requires that "a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."³ To improve his credit score, Applicant opened two new credit cards (one jointly and one individually) since August 2016 on which he owed balances of \$1,296 and \$712 as of late November 2016 while his old credit card debts remain unresolved. Even though his old credit card debt totals only \$7,783, concerns persist about his financial judgment, given he has given priority to reestablishing his own credit over repaying his old credit card debts. More documented progress is also needed toward paying his student loans.

Whole-Person Concept

In assessing the whole person, 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(d).⁴ The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has the burden of presenting evidence of relevant facts and circumstances to show why he should be granted security clearance eligibility notwithstanding the delinquent debt information on his credit record. He chose to rely on the written record. It is not enough in mitigation to assert an intention to resolve his old credit card delinquencies. In response to the FORM, he provided documentation showing that he has the income to make payments on his student loans and his old credit-card delinquencies but no evidence of any payments. 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

³ The DOHA Appeal Board stated in ISCR Case No. 07-06482, decided on May 21, 2008, in part:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate[s] that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

⁴ The factors under AG ¶ 2(d) 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.

1399, 1401 (9th Cir. 1990). Applicant's candor on his SF 86 about his student-loan default weighs in his favor. Yet, based on the evidence before me, I am unable to conclude that it is clearly consistent with the national interest to grant security clearance eligibility for Applicant.

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
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Subparagraphs 1.a-1.j:	Against Applicant
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Conclusion

In light of all of the circumstances, 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.

Elizabeth M. Matchinski
Administrative Judge