



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01126

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

03/09/2018

**Decision**

HARVEY, Mark, Administrative Judge:

Applicant made sufficient progress addressing the delinquent debts listed on the statement of reasons (SOR). Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

**Statement of the Case**

On May 10, 2016, Applicant completed and signed a Questionnaire for National Security Position (SF 86) or security clearance application (SCA). Government Exhibit (GE) 1. On May 30, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs). Hearing Exhibit (HE) 2.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations). HE 2.

On June 28, 2017, Applicant provided a response to the SOR. HE 3. On August 24, 2017, Department Counsel was ready to proceed. On August 28, 2017, the case was assigned to me. On November 8, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 30, 2017. HE 1. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant offered two exhibits; there were no objections; and all proffered exhibits were admitted into evidence. Transcript (Tr.) 19-21; GE 1-5; Applicant Exhibit (AE) A-AE B. On December 13, 2017, DOHA received a copy of the transcript of the hearing. On February 28, 2018, Applicant provided three post-hearing exhibits, which were admitted without objection. AE C-AE E.

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the new Adjudicative Guidelines (AGs), which are 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 on June 8, 2017. I have evaluated Applicant's security clearance eligibility under the new AGs.<sup>1</sup>

### **Findings of Fact<sup>2</sup>**

In Applicant's SOR response, he admitted the SOR allegations in SOR ¶¶ 1.a through 1.j. HE 3. He filed a follow-up response indicating he could not confirm the status of his student loans alleged in SOR ¶¶ 1.b through 1.j because the specific loans alleged in the SOR did not appear on his most recent consolidated student loan list. HE 3. His SOR response also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 44-year-old research scientist. Tr. 6, 9. In 1992, he graduated from high school, and in 1995, he received a bachelor's degree with a major in biology. Tr. 6. In 1998, he received a master's degree in biology, and in 2013, he received a Ph.D. in environmental sciences. Tr. 6-7. Applicant served briefly and honorably in the Coast Guard and the Navy before entering his Ph.D. program. Tr. 7-8. His expertise is in a variety of highly technical fields with potential applications to the battlefield of the future. Tr. 9-10. Applicant has never married, and he does not have any children. Tr. 12.

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<sup>1</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).

<sup>2</sup> Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

## Financial Considerations

Applicant had negative income in 2016 because his expenses exceeded his income. Tr. 23. He used funds from his parents and an investor to pay his expenses. Tr. 23. Payments he received from his parents were gifts and do not constitute income for federal income tax purposes. Furthermore, he does not have to repay his parents for their gifts. For about four years, Applicant and a university worked on a patent, and in the latter half of 2017, Applicant and a university obtained the patent. Tr. 11-12; SOR response. Applicant will receive a 40 percent royalty on the development of the patent. Tr. 11-12. Applicant's monthly expenses are currently about \$1,500, and he receives about \$500 monthly working as an adjunct professor. Tr. 24. He has about \$2,000 in savings. Tr. 24. He filed his state and federal income tax returns for the previous five years. Tr. 25. He has been using the income from an investor to pay for international patents and for some of his living expenses. Tr. 24-26. He is working on further development of inventions.

Applicant's mortgage is about six months past due, and he submitted two mortgage-modification requests to the creditor. Tr. 27. His mortgage is about \$54,000, and the fair market value of his home is about \$135,000. Tr. 38. The creditor advised Applicant that the past-due payments would be rolled into a mortgage modification. Tr. 27-28.

The SOR details the following allegations, and their status is as follows:

SOR ¶ 1.a alleges a 150 days past-due credit card debt for \$820. In October 2017, Applicant paid the credit card debt. Tr. 18, 28.

SOR ¶¶ 1.b through 1.i allege eight U.S. Department of Education (USDOE) student loan debts totaling \$83,981 placed for collection for the following amounts: \$13,214; \$2,375; \$9,969; \$12,138; \$25,446; \$2,081; \$8,032; and \$10,726. SOR ¶ 1.j alleges one non-USDOE student loan debt past due for \$2,110 with a total balance of \$8,000.

Applicant attended a university for 10 years to receive his Ph.D., and he accrued a large amount of student loan debts. Tr. 31. He was charged out-of-state tuition for the first seven years of his Ph.D. program. Tr. 32. Applicant maintained communications with his student loan creditors. Tr. 25.

On March 30, 2015, Applicant wrote one student loan creditor requesting an income-driven student loan payment plan.<sup>3</sup> His request indicated his monthly expenses exceeded his monthly income. On October 27, 2016, the student loan creditor wrote that Applicant's 10 student loan debts totaling \$170,743 were in a \$5 monthly student loan rehabilitation program. On December 4, 2017, a new student loan creditor wrote Applicant seeking payments on student loans totaling \$122,045, and Applicant requested and received an income-based deferment until April 2017. Applicant was notified that the

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<sup>3</sup> The sources for the information in this paragraph are documents included as part of his response to the SOR. HE 3.

income-based deferment required an annual request for renewal with updated information about his income. On June 6, 2017, a student loan creditor wrote Applicant that the amount due in June 2017 on a \$125,459 student loan debt was zero.

Applicant incorrectly believed all of his student loans were consolidated into one account. Tr. 19. When he received the SOR, he learned nine student loans were not included in his consolidated account. Tr. 19. He could not afford the suggested payment plan of the unconsolidated student loans. Tr. 33-34. On September 7, 2017, Applicant applied to consolidate 19 student loan debts owed to three different creditors totaling \$288,576 into one account. Tr. 28-29; AE A. He owed the largest student loan creditor (SLC) \$197,506 before the second consolidation. AE B. SLC had difficulty correctly consolidating his student loans and some accounts were duplicated. Tr. 30. On December 14, 2017, SLC wrote that student loans in SOR ¶¶ 1.b through 1.j totaling \$99,592 were paid and consolidated into the SLC account. AE E. His student loan debts are in an “income driven repayment plan.” Tr. 30-31. He said payments are deferred until his income increases. Tr. 31. On February 13, 2018, SLC wrote the total amount due on his \$288,576 student loan debt for March 2018 was zero. AE E. His student loans are now current under an income driven repayment plan.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a

determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

## **Analysis**

### **Financial Considerations**

AG ¶ 18 articulates the security concern for 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. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the

totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Seven financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,<sup>4</sup> 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 individual has received or is receiving financial 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;<sup>5</sup> and

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<sup>4</sup> A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

<sup>5</sup> The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant has a history of limited income while attempting to market and develop his patent. He was unable to make payments on his student loans and mortgage. His student loans were placed into a consolidated account with SLC. The creditor has waived payments until his income increases. His mortgage is pending a loan modification. His home could be sold, if necessary, and he has ample equity to pay his mortgage. He acted prudently and responsibly under the circumstances.

Applicant's failure to make payments to his mortgage and student loan creditors is excused due to his inability to make payments. All of Applicant's debts are either paid, in current payment plans, pending possible modification, or deferred. There is sufficient assurance his financial problems are being resolved, under control, and will continue to improve in the future. Under all the circumstances, he mitigated financial considerations security concerns.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

(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(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are 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 is a 44-year-old research scientist. In 1995, he received a bachelor's degree with a major in biology. In 1998, he received a master's degree in biology, and in 2013, he received a Ph.D. in environmental sciences. He has a 40 percent interest in potential royalties on a patent. His expertise is in a variety of highly technical fields with potential applications to the battlefield of the future. He is focused on developing additional technology to assist in the national defense.

All of Applicant's debts are paid, in current payment plans, pending possible modification, or deferred. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily 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 demonstrate 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 his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant understands what he needs to do to establish and maintain his financial responsibility. He took reasonable actions under his particular financial circumstances to address his delinquent debts. Applicant has established a “meaningful



track record” of debt re-payment, and he assures he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations security concerns are mitigated. It is clearly consistent with the interests of national security to grant Applicant 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:	FOR APPLICANT
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Subparagraphs 1.a through 1.j:	For Applicant
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### **Conclusion**

In light of all of the circumstances in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Mark Harvey  
Administrative Judge