



**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. 17-01387

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

02/01/2018

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

**Statement of Case**

On May 26, 2017, the Department of Defense (DoD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 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 (AGs) implemented by DoD on September 1, 2006.

The Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DoD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect for the issuance of the SOR would not affect my decision in this case.

Applicant responded to the SOR on June 16, 2017, and she requested a hearing. The case was assigned to me on July 14, 2017, and scheduled for hearing on August 4, 2017. The Government's case consisted of four exhibits (GEs 1-4). Applicant relied on three witnesses (including herself) and seven exhibits. (AEs A-G) The transcript was received on August 14, 2017.

### **Procedural Issues**

Before the close of the hearing, both parties asked to keep the record open to permit them to check on Applicant's current sponsorship for a security clearance. While sponsorship was confirmed by Department Counsel at hearing (Tr. 112-113), the record was kept open to permit both parties to double-check and submit clarifying information if necessary. For good cause shown, the parties were granted 14 days to supplement the record if necessary. Neither party supplemented the record, and based on the information furnished at hearing, findings are in order that Applicant continues to be sponsored for her security clearance by her current employer.

### **Summary of Pleadings**

Under Guideline F, Applicant allegedly accumulated four delinquent student loans, exceeding \$64,000 in the aggregate. Allegedly, these debts remain outstanding.

In her response to the SOR, Applicant admitted each of the allegations. She provided no explanations or claims.

### **Findings of Fact**

Applicant is a 36-year-old security information assurance analyst for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant recently married and has no children. (GEs 1-2; Tr. 48) She earned a bachelor's degree in mathematics in May 2008 and financed her education with Sallie/Mae guaranteed loans exceeding \$100,000. (GE 1; Tr. 41-43, 48-49, 82-83) She consolidated her public loans in August 2016 and maintains these loans in current status

with a balance of \$98,000 and monthly payments of \$135. (AEs F-G; Tr. 67) She earned associate degrees from a nationally accredited private technical institution for profit in December 2009 and September 2011. She earned a bachelor's degree in October 2011 from the same institution. (GEs 1-2; Tr. 50-51, 84-88) She financed her education with private loans. (GEs 1-2 and A-C; Tr.50-51) Applicant reported no military service.

Applicant has worked for her current employer since November 2010. (GEs 1-2; Tr. 52-53, 65-66) Between January 2002 and the present, she has worked contemporaneously as a self-employed network computer technician (less than 20 hours a week) for a non-DoD firm, and she has worked as a math tutor to supplement her income. (GEs 1-2; Tr. 51-53)

### **Applicant's finances**

Before turning to her current private lender for her student loans, Applicant applied to other private lenders. (AEs A-B; Tr. 64, 86) These other lenders declined to give her a loan due to her school's vocational status. Securing student loans from her private lender of record in July 2012 (AE B), she accumulated over \$65,000 in student loan debts while enrolled in on-line courses with her technical institute between December 2009 and October 2016. Applicant's monthly payments on her private loans approximated \$800 a month. (Tr. 42) For several months after completing her studies, she made her scheduled \$800 payments. (Tr. 54, 67)

Struggling to make both her Sallie Mae and private loan payments, she ceased making her scheduled private loan payments in 2016 and dropped her payments to \$25 a month for several months while seeking loan consolidation and lower payments from the lender. (Tr. 44-48, 69-70) After the private lender summarily denied her requests to lower her payments, she ceased making payments altogether and has made no further attempts to contact the lender to explore consolidating her four loans with lower monthly payments. (Tr. 46-48) Applicant's most recent account summary reports current principal and interest on the loans of \$64,000 in the aggregate and past due balances in excess of \$8,000. (AE E)

In 2016, Applicant's for profit educational institute petitioned for Chapter 7 bankruptcy protection. (AEs C-D) Applicant, in turn, filed a proof of claim in the bankruptcy in January 2017 seeking reimbursement of her tuition payments totaling \$65,214. (AEs C-D) The lender's bankruptcy proceeding remains pending with no time estimates of when the petitioner will receive its discharge, or when and how Applicant's claim will be resolved. (Tr. 107) Applicant has no bankruptcy schedules in her possession to ascertain whether her private student loan lender filed a proof of claim in her school's bankruptcy proceeding, and she has no identifiable access to obtaining them, (Tr. 107-108) She believes that her school is solely responsible for its closing of its facilities to students. (Tr. 109)

To date, Applicant has received no response from her school's bankruptcy trustee or the school itself about the status of her proof of claim. (Tr. 56-57) Whether her private

lender ever filed a proof of claim of its own is unclear. Without documentation of the school's bankruptcy petition, included schedules, and dispositions made by the bankruptcy court on the merits of Applicant's reimbursement claim, no inferences can be drawn about Applicant's prospects for favorable disposition of her claim, or the potential for available assets for honoring any favorable determination of her claim.

Conceivably, Applicant's student loan agreements with her private lender contain contingency clauses covering loan forgiveness or discharge of Applicant's loans in circumstances, where, *inter alia*, the institution filed for bankruptcy or other legal relief that adversely affected the value of her educational achievements or lender-borrower relationships. (Tr. 58-60, 62-63) Possibly, her loan agreements covered any school closures and other events that precluded the school from fulfilling its educational commitments to Applicant and her lender. (Tr. 62-63) All of these possibilities are speculative, though, and cannot be resolved with any degree of factual certainty without access to Applicant's loan application and lender approvals. Absent any applicable forgiveness provisions in her loan agreements, she remains liable to her lender for her outstanding loans, irrespective of the merits of the claims she has made against her school in its pending Chapter 7 petition.

At this time, too little is known about Applicant's payment terms and options with her private lender to draw any clear inferences about the scope of her payment responsibilities with her private lender. Whether she has any financial recourse against her school cannot be ascertained without copies of her loan agreements and other information from the school that might provide answers and clarifications of recourse she could conceivably have against the school and her lender. From the evidence developed in the record, there is nothing to warrant assigning any lender responsibility for ensuring Applicant a quality education from the school who received Applicant's authorized loan funds from her lender. Asked whether she had any evidence of the Government's contributing in any way to the closing of her school, Applicant confirmed that she did not. (Tr. 107)

Because Applicant did not provide a personal financial statement (covering her monthly net income, monthly expenses, and any monthly remainder), or other documented evidence of discretionary spending available to her, a probative assessment of her finances cannot be made. As the record stands, there is no evidence of a budget or any financial counseling to assess her ability to address her outstanding student loan debts.

### **Character references**

Applicant is well-regarded by her mother and step-father who characterized her as trustworthy and reliable. Her stepfather, who has known Applicant for 20 years, credited her with being committed to her schooling and "squeaky clean." (Tr. 93). Likewise, her mother characterized her as devoted to her educational pursuits and trustworthy and reliable in every way. (Tr. 103-104) Expressing her belief that the Government was responsible for shutting down Applicant's school, she conceded that she did not have any corroborative evidence to support her beliefs. (Tr. 99-101) Based on the evidence

produced, responsibility for running out of operating resources and petitioning for Chapter 7 bankruptcy relief lies with Applicant's school.

## **Policies**

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

## **Financial Considerations**

*The Concern:* 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 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 of dependence. An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds . . . . AG ¶ 18.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised over Applicant's accumulating delinquent school loans (four in all) with a private lender exceeding \$65,000. These loans remain delinquent. Applicant's past efforts to consolidate her loans and reduce the monthly payments were unsuccessful, Her continuing loan deficiencies warrant the application of

two of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), “inability to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s pleading admissions with respect to her listed student loan debts negate the need for any independent proof. See *McCormick on Evidence*, § 262 (6th ed. 2006). Applicant’s delinquent debts are fully documented in her credit reports and create some initial judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles her to access classified information. While the principal concern of a security clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Extenuating circumstances (i.e., lack of sufficient income to cover her private student loans) have accounted for a good deal of Applicant’s financial problems over the course of the past several years while she was completing her on-line studies. MC ¶ 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances,” partially applies to Applicant’s situation.

Since 2016, Applicant has made no additional payments to her student loan lender (citing the lender’s unwillingness to work with her) and still hopes to consolidate her loans with lower monthly payments. Progress to date in addressing these loans, individually or through her lender’s Chapter 7 bankruptcy is very limited. Because Applicant did not provide a personal financial statement or other evidence documenting her net monthly income, monthly expenses, and available income for discretionary spending) cannot be fully assessed with the information furnished by Applicant. What can be derived from this record is that her cumulative repayment efforts lack the strength of sustained purpose to meet the acting responsibly prong of MC ¶ 20(b). See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

Applicant’s corrective steps taken to resolve her delinquent private student loan debts are not enough to enable her to avail herself of the mitigation benefits of MC ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.” And, since she does not dispute her student loans or delinquent status, she may not avail herself of the benefits of MC ¶ 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.”

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted) In Applicant’s case, she has a very limited track record in addressing her private student loan debts. She has not been in contact with her lender since she ceased making small payments to the lender in 2016 and has no immediate plans to resume her monthly payments.

### **Whole-Person Assessment**

Whole-person assessment is a mixed one for Applicant. While she is credited for her honesty, trustworthiness, and reliability by her mother and stepfather, she has shown only modest progress to date in addressing her private student loan debts through a combination of trying to work with her lender while pursuing her proof of claim in her school’s Chapter 7 bankruptcy proceeding. Overall, Applicant’s actions to date in addressing her finances reflect modest but insufficient financial responsibility and good judgment to to credit her with restoring her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

Conclusions are warranted that Applicant’s finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Unfavorable conclusions are entered with respect to the allegations covered by subparagraphs 1.a-1.d of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

#### **GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT**

Subparagraphs 1.a-1.d

Against Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility to hold a security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge





