



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



In the matter of:

ISCR Case No. 17-01556

Applicant for Security Clearance

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: Andrew Bakaj, Esq.

05/01/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant refuted the personal conduct security concerns raised, but he did not mitigate the financial considerations security concerns relating to student loans. National security eligibility for access to classified information is denied.

**History of Case**

On June 1, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). On June 27, 2017, Applicant answered the SOR and requested a hearing before an administrative judge.

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 16, 2017. DOHA issued a Notice of Hearing on December 12, 2017, setting the hearing for January 10, 2018. On that date, Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant testified, called three witnesses, and offered Exhibits (AE) A through E into evidence. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 19, 2018. The record

remained open until February 12, 2018, to permit submission of additional evidence and Applicant's closing argument. Applicant timely submitted AE F through L without an objection from Department Counsel. Those exhibits are admitted. Applicant's attorney also submitted a Closing Argument (Enclosure 1) and a Certificate of Service (Enclosure 2).

### **Findings of Fact**

Applicant is 56 years old and married for 36 years. He and his wife have four adult children. Applicant earned an associate's degree in 1993. He earned a bachelor's degree in 2006, a master's degree in 2009, and a certificate in communications in 2011. He has held a security clearance since 2005, and has had access to sensitive compartmented information (SCI) with a national law enforcement agency since 2016. He started his current position in November 2015. Prior to this job, he has worked for other federal contractors since 2003. He experienced short periods of unemployment between contracts. (Tr. 40-41; GE 1; AE A)

When Applicant completed Section 26 in his March 2016 security clearance application (SCA), which requested information about delinquent debts or accounts, Applicant failed to disclose his delinquent or unpaid student loans. He had taken out those loans to pay for the cost of his bachelor's degree in 2006, a master's degree in 2009, and a certificate program that he completed in 2011. (Tr. 44, 89; GE 1)

In November 2016, Applicant was interviewed by a government investigator about information in his SCA. During the interview, Applicant discussed the status of his unpaid government and private student loans. He indicated that he was attempting to consolidate and pay them. He believed some loans were in deferment. (GE 3)

During his testimony, Applicant reiterated that he thought his loans were deferred when he submitted the SCA. (Tr. 44-45, 55) He was unaware that his government student loans were past due, until late May or early June 2017, when he heard from the creditor. He learned the private loans were due in early May or June 2016, and said that he began making payments on those loans in November 2016. (Tr. 47-49, 77) He denied that he intentionally failed to disclose the delinquent student loans on his SCA. (Tr. 55) He also assumed that the Government had knowledge of his student loans, and he emphasized that he was not trying "to pull a fast one." (Tr. 95)

Based on credit bureau reports (CBR) from May 2016 and December 2017, the SOR alleged 15 government student loans that became delinquent in June 2014, and 3 private student loans that were unpaid in April 2016. The alleged student loans totaled over \$196,000. (GE 7, GE 8) As of June 2017, the balance on the government loans was \$182,463.<sup>1</sup> (AE C) As of October 2016, the balance on the private loans was \$93,885,

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<sup>1</sup> According to a December 2017 statement from the government student loan program, the balance was \$185,856 as of that date. (AE G)

which included about \$50,000 of educational loans (SOR ¶¶ 1.p and 1.q) that Applicant co-signed for his son.<sup>2</sup> (Tr. 47, 72; AE C, AE D, AE J)

After completing his certificate course in 2011, Applicant did not begin making payments on any of the student loans. He said he was laid off between April and May 2011, and then moved to another state for a job and remained there for a year. He stated that he put the loans in a deferred status at that time. He returned home in March 2012 and was again without a job for a month. From May 2012 until June 2015, he lived and worked in a different state. In June 2015, he returned home and began his current position in November 2015. (Tr. 64-66) He asserted that he was unable to pay the student loans prior to taking his current position because he lacked sufficient money, as a consequence of maintaining two households during the years he worked in other states, and experiencing periods of unemployment. (Tr. 64-67)

Applicant acknowledged that from the time he began a bachelor's degree in May 2005 until November 2016, he did not make payments on any loan. After being contacted by the private loan company in April 2016, he said he started making monthly payments of \$500 on the private loans, alleged in SOR ¶¶ 1.p through 1.r, in November 2016. He began repaying the government student loans, alleged in SOR ¶¶ 1.a through 1.o, in June 2017, through monthly payments of about \$500. He thinks it will take him 10 to 12 years to pay the loans. (Tr. 91-92; GE 1)

Applicant said he kept the loans in a deferred status or believed they were deferred until 2016. (Tr. 89- 91) He had periodic contact with the creditors, sometimes every six months, but continued to think that the loans were deferred, although he did not remember the last time he actively requested a deferment. (Tr. 67, 71) As of this hearing, he has been making payments on both loans and they are in a current status. (Tr. 43, 53-54, 89-91; AE C, AE D, AE F, AE G)

Applicant submitted a financial statement. He noted that he owes about \$220,000 for student loans.<sup>3</sup> (AE E) His current annual salary is \$125,000. (Tr. 59) He does not have a written budget. (Tr. 93-94) After the hearing, he contacted a credit counseling company for financial counseling. (AE K) He filed all federal and state tax returns for the past eight years. He does not owe any outstanding taxes. His federal tax refunds for 2015 and 2016 were seized by the government and applied to his government student loans. The refunds totaled about \$3,000. After learning of the seizures, he did not investigate the reason for them, but thought the Government took the money because his loans were deferred. (Tr. 60-62)

Applicant admitted that he “put his head in the sand” about his loans for many years, and essentially ignored them because he could not afford to pay them. (Tr. 68) He

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<sup>2</sup> According to January 2018 statements from the two private student loan programs, the combined balance was \$92,139 as of that date. (AE F)

<sup>3</sup> During his testimony, Applicant acknowledged that based on the statements in evidence, he owed \$276,000 in student loans. (Tr. 81, 91)

never thought about obtaining a credit report during this investigation to confirm the deferment status of his loans. (Tr. 70-71) He acknowledged that during a previous security clearance investigation in 2010 he discussed his financial status, which included delinquent debts.<sup>4</sup> (Tr. 69; GE 4)

Applicant called three witnesses. His wife learned of the student loan problems around Christmas time in 2016. Applicant manages their finances and she is responsible for other aspects of the household. She strongly supports her husband. She co-signed for another son's educational loans. Those loans total between \$40,000 and \$60,000. (Tr. 30-36, 87-88)

Applicant's direct supervisor testified. He has been Applicant's supervisor since November 2017. He said Applicant is an outstanding, reliable and honest employee. He recommends him for a security clearance. (Tr. 16-24) Applicant's manager testified. She too recommends him for a security clearance and believes he possesses good judgment and is trustworthy. (Tr. 24-29)

### **Policies**

The action was taken under 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 (AG) that became effective on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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

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<sup>4</sup> The SOR did not allege facts related to Applicant's 2010 financial problems as a security concern. That adverse fact will not be analyzed as a potential disqualifying condition, but may be considered under the analyses of mitigating conditions and the whole-person concept, and the evaluation of Applicant's credibility.

drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns. Three 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.

Applicant has been unable or unwilling to address his large number of unpaid student loans that began accumulating in 2006 and remained that way until late 2016. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties. The following four may potentially apply:

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

None of the above mitigating conditions apply. The evidence does not establish mitigation under AG ¶ 20(a). Applicant owes a significant amount of money for unpaid student loans. That problem has been ongoing since at least 2014 when his government loans became delinquent. His failure to timely address the loans casts doubt on his judgment. Some of Applicant's financial problems arose because he maintained two households while working in different states in order to support his family. That may have been a circumstance beyond his control. However, his decision to continue obtaining student loans for his advanced education and his son's education, was within his control. There is insufficient evidence that Applicant attempted to responsibly manage his student loan debts as they were accumulating or after they became due. There is minimal evidence to establish mitigation under AG ¶ 20(b). Applicant did not provide evidence that he participated in credit or financial counseling and that his significantly large student loan debt is under control, as required under AG ¶ 20(c). Although he recently established

payment plans for the loans during this security clearance investigation, those actions do not constitute a good-faith effort to repay his loans, given his years of indifference and failure to address them prior to 2016. The evidence does not establish mitigation under AG ¶ 20(d).

### **Guideline E: Personal Conduct**

AG ¶ 15 explains the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

Applicant acknowledged that he did not disclose his delinquent or unpaid student loans in his March 2016 SCA, but denied that he intentionally misled the Government as alleged in SOR ¶ 2.a. When a falsification allegation is controverted or denied, as in this case, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred.<sup>5</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant's explanation that he did not intentionally attempt to deceive the Government by failing to disclose student loan debt in his SCA was sufficiently credible. He stated that he was unaware at that time that the debts were no longer in deferment, and he believed the Government would have known of them. He proffered this explanation during an investigative interview in 2016 and in his hearing. After listening to Applicant testify and observing his demeanor, I find his explanation for failing to disclose

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<sup>5</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

specific information as alleged in SOR ¶ 2.a demonstrated negligence, given his previous financial problems, but that he did not intentionally attempt to falsify his 2016 SCA. Applicant successfully refuted the personal conduct security concern. SOR ¶ 2.a is found in his favor and a discussion of the applicability of mitigating conditions is not pertinent.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case, including those mentioned in the analysis of the financial considerations guideline. Applicant has successfully worked for his employer since November 2015. He accepts responsibility for his student loans and is remorseful over his large unresolved student debt. Those are positive factors in this case. However, his \$220,000 student loan debt accumulated between 2006 and 2011. He recently began to address it, essentially after he submitted his SCA and received the SOR. At this time, he has not established a solid record of responsibly resolving his student loans or managing his finances. Overall, he has not met his burden to mitigate the security concerns arising under the guideline for financial considerations. He successfully refuted the security concerns raised under personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:

Subparagraphs 1.a through 1.r:

**AGAINST APPLICANT**

Against Applicant



Paragraph 2, Guideline E:  
Subparagraph 1.a:

FOR APPLICANT  
For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM  
Administrative Judge