



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



In the matter of: )  
 )  
 ) ISCR Case No. 17-03195  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Allison Marie, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2018  
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**Decision**  
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CERVI, Gregg A., Administrative Judge:

Applicant mitigated the personal conduct concerns, but failed to mitigate the financial considerations. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 5, 2016. On October 5, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).<sup>1</sup>

Applicant answered the SOR and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents,

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<sup>1</sup> The DOD CAF acted 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 (AG) implemented by the DOD on June 8, 2017.

known as the File of Relevant Material (FORM), was submitted by Department Counsel on November 7, 2017.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 17, 2017. He submitted two letters and supporting documents in response to the FORM, marked as Applicant Exhibits (AE) A and B. The Government's exhibits included in the FORM (Items 1 to 7), and the Applicant's exhibits (AE) marked as AE A and B, are admitted into evidence. The case was assigned to me on March 6, 2018.

### **Findings of Fact**

Applicant is a 30-year-old alarm monitor for a defense contractor since November 2016. He received an associate's degree in 2008 and a bachelor's degree in 2014. Since graduating from college, he was unemployed from December 2014 to January 2015 after being fired from his job, and from April to November 2016 when he quit to care for his fiancée. He has never been married but has lived with his fiancée since May 2014. He has a six-year-old child. Applicant has never held a security clearance.

The SOR alleges six delinquent federal student loans accounts, totaling about \$38,554. The SOR also alleges Applicant falsified his 2016 SCA by failing to disclose his delinquent student loans. Applicant admits the allegations with explanations.

Applicant noted that after he graduated from college, the student loans were in a forbearance status for some period of time. He struggled to find a job that paid a sufficient amount to begin addressing the loans. As time progressed, the loans "faded from thought." He stated that he is current on all other debts and expenses. He noted that when he completed his SCA, he answered "no" to the SCA questions about financial delinquencies because he believed the accounts were closed and that he owed nothing on the student loans based on what he viewed in his credit report. When he was interviewed by an Office of Personnel Management (OPM) investigator, he volunteered that he had delinquent student loans, and thought the investigator corrected his mistake on the SCA on his behalf.

Applicant entered into a student loan rehabilitation payment authorization on October 2017 and agreed to the terms of the agreement on November 8, 2017. The agreement requires that he make nine monthly payments of \$5 beginning in October 2017. Applicant has made four \$10 payments from October 2017 to January 2018. He noted that if he receives a security clearance, he will be able to make larger payments to resolve the debts.

### **Law and Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 concern for financial considerations is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable 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 incurred over \$38,000 in delinquent student loans that remain unresolved. The evidence and Applicant's admissions are sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the 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; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Appellant attributed his financial problems to lost income and underemployment since graduating from college in 2014. Although these may be conditions that resulted in

his student loan delinquencies, his periods of unemployment were not beyond his control as he was fired from one position, and he quit the other. Regardless, he failed to show efforts to adequately address his student loans until after receiving the SOR in this case. His periods of unemployment undoubtedly contributed to his ability to pay on his debts, but he offered no documentary evidence showing efforts to resolve the issue with the creditor or to request additional periods of forbearance until after he received the SOR. He did not submit evidence of his current financial status and ability to make required payments on his rehabilitation agreement and subsequent required loan payments.

I am unable to find that he acted responsibly under the circumstances or that he made good-faith efforts to pay his debts or negotiate good-faith solutions until he received the SOR. Applicant exhibited financial irresponsibility that has not been sufficiently mitigated. His actions continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(d) is partially applicable but not conclusive. He has paid only \$40 toward his delinquent loans to date, and there is no evidence he will be able to continue with timely and appropriate payments in the future. I have insufficient evidence to determine that he has control over his finances and can meet future financial obligations when due. None of the other mitigating conditions apply.

#### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

When falsification allegations are controverted, as in this case, the Government has the burden of proving the allegations. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.<sup>2</sup> An applicant's level

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<sup>2</sup> See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.<sup>3</sup>

Appellant did not report his delinquent student loans on his 2016 SCA because he believed them to be closed with a zero balance. He denied intentionally falsifying the SCAs, and attributed the omission as a mistake that he voluntarily clarified when he spoke to the OPM investigator. I find Applicant's failure to report delinquent debts on his 2016 SCA as unintentional. AG ¶ 16 is not applicable to SOR ¶ 2.a. The personal conduct security concern is concluded for Appellant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

I considered Applicant's Answer to the SOR and his responses to the FORM. Applicant has not shown that he was financially responsible. There is insufficient evidence that he has gained control of his finances and can pay future student loan obligations when the rehabilitation agreement is converted into a regular payment schedule. I am not convinced that he intentionally failed to submit truthful answers on his SCA as noted above.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations. Personal conduct security concerns were not established.

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<sup>3</sup> ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

### **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:	Against Applicant
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

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Gregg A. Cervi  
Administrative Judge