



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



In the matter of:)
)
) ISCR Case No. 24-01553
)
Applicant for Security Clearance)

Appearances

For Government: John B. Renahan, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2025

Decision

HARVEY, Mark, Administrative Judge:

Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On September 26, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On January 31, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA 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. (HE 2) On February 13, 2025, Applicant provided his response to the SOR. On April 4, 2025, Department Counsel was ready to proceed. On April 10, 2025, the case was assigned to me. On May 7, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing on May 23, 2025. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered six exhibits into evidence, and Applicant did not offer any exhibits into evidence. (Tr. 11, 13-14; GE 1-GE 6) There were no objections, and all proffered exhibits were admitted into evidence. (Tr. 14) On June 11, 2025, DOHA received a copy of the transcript. The record was not held open after the hearing.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the SOR allegation in ¶ 1.a. His admission is accepted as a finding of fact.

Applicant is a 26-year-old test engineer who has worked for a government contractor for three years. (Tr. 6, 8) In 2016, he graduated from high school, and in 2020, he received a bachelor's degree. (Tr. 6-7) He majored in aerospace engineering. (Tr. 7) He has never married, and he does not have any children. (Tr. 8) He has never served in the military. (Tr. 8) There is no evidence of security violations, abuse of alcohol, use of illegal drugs, or criminal conduct.

Financial Considerations

Applicant said all of his legitimate debts are current. (Tr. 15) He disputed his responsibility for the delinquent SOR debt in SOR ¶ 1.a, which alleges that Applicant has a charged-off debt for \$31,559. SOR ¶ 1.a is a debt owed to a student loan creditor (N1). Applicant's most recent credit bureau report (CBR) of record is dated December 27, 2024, and it shows that N1 is the creditor for SOR ¶ 1.a; the status is charged off; and the balance is \$31,559. (Tr. 51; GE 6)

Applicant has student loans totaling about \$190,000 primarily with companies E and D. (Tr. 19-20) He owes about \$179,000 to company E, and his monthly payment is \$1,839. (Tr. 52; GE 6) He is making his loan payments to the student loan creditors, except for the debt in SOR ¶ 1.a. (Tr. 28)

Applicant applied for a loan from N1 using his phone. (Tr. 21; GE 2 at 7) The loan was supposed to refinance an existing student loan. During the application, he decided not to accept the loan. He said he meant to click the button for "dismiss," and instead he accidentally clicked "sign." (Tr. 24) On April 10, 2024, he said, "I did sign with [N1],

[however] I immediately cancelled the refinance loan the same day. I called the next day to confirm that said loan was cancelled before signing with [a different loan company.] \$31,559 was lost somehow, and they claim that I owe it to them. . . . I refuse to make payments on a loan that I cancelled." (Tr. 24; GE 2 at 7) He said he received an email indicating the loan was cancelled. (Tr. 24) He said he could provide the email after his hearing. (Tr. 25) He did not provide any documentation after his hearing.

Applicant contacted N2 to investigate whether he could get a lower interest rate to refinance his student loans the day after he cancelled the N1 loan. (Tr. 26) N2 did not give him a good enough student loan interest rate, and he elected not to borrow from N2. (Tr. 26)

Applicant said N2 advised him a check was sent to him. (Tr. 48) Applicant advised the creditor, "okay, I'll keep an eye out for it. And if there was [a] check that's sent to me, now I'll make sure to send it back, you know. I'm sure to send it back and everything, so yes, . . . a check never came." (Tr. 48)

N2 contacted Applicant to repay the loan in SOR ¶ 1.a. (Tr. 27) He denied that he received a loan from N2. (Tr. 27) N2 informed him that N1 was a sister company with company E and worked with company D, and Applicant refinanced multiple loans with E. (Tr. 27-28)

Applicant said he did not understand why he was receiving bills from N2. (Tr. 28) Applicant said N2 sent a check for about \$31,000 to company D. (Tr. 29) In May 2022, company D sent a check to Applicant's parents' residence. (Tr. 17, 30, 33) Applicant did not understand why the payor of the check was company D. (Tr. 30) The check was made out to Applicant as the payee. (Tr. 30) Applicant had moved to a different address, and he did not receive the check from company D. (Tr. 17) Applicant said he did not know when the check arrived at his parents' residence. (Tr. 29)

In August 2022, Applicant became aware of the \$31,000 in SOR ¶ 1.a being sent to his old address when N2 contacted him about repayment. (Tr. 31, 33) His view was that he did not sign an agreement with N2, and "this \$31,000 has nothing to do with me." (Tr. 33) He considered the issue to be between N2 and company D even though they did not have the \$31,000 at issue. (Tr. 34)

In December 2024, Department Counsel asked Applicant for information about the check; Applicant in turn asked his parents about the \$31,000 check; and his parents said they deposited the \$31,000 check in a joint account they had with Applicant. (Tr. 35-36) Applicant said he was unaware that the funds went into his account until about January 2025. (Tr. 35) His father was unemployed for a time. (Tr. 38) His parents assumed the check was the result of a student-loan rebate because Applicant had good grades in college. (Tr. 37) His parents used the \$31,000 to pay their debts and expenses. (Tr. 38-39) He said he would not ask them to return the money because he never signed an agreement with N2. (Tr. 40) His parents have the funds to repay the debt. (Tr. 41)

Applicant conceded that N2 sent the funds that went through company D and into his account; however, he said the idea that he should repay the \$31,000 to N2 was “ludicrous” because he never signed an agreement to borrow funds from N2. (Tr. 40, 44)

Applicant said if he received a large check in the mail with his name as the payee, he would assume it is a scam and throw the check away. (Tr. 45) If he received a large check from N2 or another creditor today, he would send it back to the creditor. (Tr. 48) He said he had the funds available to him to pay the debt in SOR ¶ 1.a or at least to arrange a payment plan. (Tr. 45-47) His gross monthly income is about \$8,000. (GE 3) He objected to paying the debt out of “principle,” and he would not pay the debt unless there was a court order requiring him to do so. (Tr. 46-47) He summarized his position on repayment of the debt as follows:

I truly, wholeheartedly believe that I shouldn't have to pay not a dime to a – to a student loan corporation that I never signed with. And I truly believe too that if – at the end of the day, if I truly owed them those funds, we would've gone to court by now. I haven't heard anything from them. It was – there was literally just one letter . . . threatening legal action, and then I've heard no other communication from them. So I believe if there was a case to be had where I owed them the money, we would – I would be fighting this in court. (Tr. 46)

Applicant wanted to keep his parents out of his dispute with N2 over the \$31,000. (Tr. 46) He stopped his communication with N2 after N2 threatened to take him to court because he believed it was improper for them to suggest taking him to court when they had not investigated the facts. (Tr. 49-50) N2 has not contacted Applicant for the past two years. (Tr. 43) He has never communicated with company D about the debt. (Tr. 43) He offered to resolve the debt allegedly owed to N2 after his hearing, if it would alleviate security concerns. (Tr. 62-64) I advised him that resolution of this debt after his hearing would be taken into consideration; however, I could not guarantee that it would mitigate security concerns. (Tr. 64)

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, this decision should not be construed to suggest that it is based 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 [or her] 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. 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 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 one disqualifying condition that could raise a security concern and may be disqualifying in this case, "(c) a history of not meeting financial obligations."

"[A] single debt can be sufficient to raise Guideline F security concerns." ISCR Case No. 19-02667 at 3 (App. Bd. Nov. 3, 2021) (citing ISCR Case No. 14-05366 at 3 (App. Bd. Feb. 5, 2016)). "Additionally, a single debt that remains unpaid over a period of years can properly be characterized as a history of not meeting financial obligations." *Id.*

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted).

The record establishes the disqualifying condition in AG ¶ 19(c). Additional inquiry about the possible applicability of mitigating conditions is required. Discussion of the disqualifying conditions are contained in the mitigation section, *infra*.

The financial considerations mitigating conditions under AG ¶ 20, which may be applicable in this case are as follows:

- (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.

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

AG ¶ 20(a) does not apply to the SOR debts. "It is also well established that an applicant's ongoing, unpaid debts demonstrate a continuing course of conduct and can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR 22-02226 at 2 (App. Bd. Oct. 27, 2023) (citing ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017)).

There were miscommunications between Applicant and the creditor in SOR ¶ 1.a. He moved to a different location; a check for \$31,559 was sent to his parents' residence; and his parents were living at his previous address. His parents deposited the check into a joint account they had with Applicant. These are circumstances largely beyond his control. However, “[e]ven if [an applicant’s] financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the [administrative judge] could still consider whether [the applicant] has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). He did not establish that he acted responsibly under the circumstances because he has not made any progress addressing the debt in SOR ¶ 1.a.

Applicant detailed several reasons for not paying the debt to N2: (1) N2 is collecting this debt, and he never agreed to accept a loan from N2. He agreed to a loan from N1, and N1 evidently transferred or sold the debt to N2; (2) He did not personally receive the \$31,559; and (3) N2 threatened to sue him.

Applicant's arguments are without merit for the following reasons: (1) The law authorizes creditors to sell or transfer debts. There is no basis to believe N1 could not lawfully transfer the debt to N2; (2) Applicant agreed to a loan from N1, and a check was sent to the address where the creditor believed he resided. His parents deposited the check into his account. The funds were available to Applicant. He did not prove that he did not use funds from his account; and (3) Under the circumstances, N2 believed Applicant received the funds at issue, and it is not unlawful for N2 to threaten to sue to obtain repayment of a loan. None of these arguments are sufficient to mitigate SOR ¶ 1.a.

Applicant did not provide any documentary evidence that his parents used the funds in his account without his permission. If they had his permission to use the funds in the account including the \$31,559, then he is responsible for repayment of the debt. If they acted without permission, then he has a duty to inform the creditor about what happened to the funds. He did not meet his burden of proving he mitigated SOR ¶ 1.a.

Financial considerations security concerns are not fully mitigated. Applicant's SOR listed one delinquent debt for \$31,559. He does not intend to pay the debt even though he has the means to arrange a payment plan. He has not made any payments to the SOR creditor for at least two years. I am not confident that he will establish a payment plan, pay this debt, and maintain his financial responsibility.

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):

(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 common-sense 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 26-year-old test engineer who has worked for a government contractor for three years. In 2020, he received a bachelor's degree. He majored in aerospace engineering. There is no evidence of security violations, abuse of alcohol, use of illegal drugs, or criminal conduct.

The evidence against grant of a security clearance is detailed in the financial considerations section, *supra*, and this evidence is more substantial than the evidence of mitigation. Applicant's SOR listed one charged-off debt totaling \$31,559. He did not establish that he was unable to make more timely and significant progress resolving this SOR debt. The financial evidence raises unmitigated questions about his judgment, reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards resolution of his debt and maintenance of his financial responsibility, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate financial considerations security concerns.

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

Subparagraph 1.a:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge