



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 14-04417
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie C. Hess, Esq., Department Counsel  
For Applicant: *Pro se*

04/28/2016

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on more than \$40,000 in student-loan debt for college studies. He has made good-faith efforts toward rehabilitating his federal student loans since October 2014, but he has yet to address a \$32,937 delinquent private student-loan balance. The financial considerations concerns are not adequately mitigated. Clearance is denied.

**Statement of the Case**

On March 26, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On June 18, 2015, Applicant answered the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals

(DOHA). On October 27, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On October 27, 2015, I scheduled the hearing for November 18, 2015.

At the hearing, three Government exhibits (GEs 1-3) and one Applicant exhibit (AE A) were admitted into evidence without objection. Department Counsel's October 13, 2015 letter forwarding discovery to Applicant was marked as a hearing exhibit (HE 1) for the record but was not admitted as an evidentiary exhibit. Applicant testified, as reflected in a hearing transcript (Tr.) received on December 2, 2015.

### **Findings of Fact**

The SOR alleges that Applicant owed delinquent student-loan debt totaling \$43,350 (SOR ¶¶ 1.a-1.d) as of March 26, 2015. Applicant explained that three of the alleged student loans (SOR ¶¶ 1.a-1.c) were federal student loans that were no longer delinquent as of April 9, 2015, after he made nine consecutively monthly payments to rehabilitate them. The student loan in SOR ¶ 1.d was a private loan for \$21,000, which has increased over time to \$32,937 because of its high interest rate. He added that the lender had offered to settle for a \$7,000 lump sum, and he was hoping to take a personal loan from his family to settle the debt. Applicant's admissions to the student-loan debts are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact:

Applicant is 31 years old. He began working for his current employer as an intern in July 2012 (GE 1) and became a full-time employee on July 17, 2014. (Answer.)

Applicant graduated from high school in June 2003. In September 2004, he began studies toward a bachelor's degree at an art and technology institute. He worked part-time for a pizza restaurant while in college, but he also relied on federal and private student loans to pay his college tuition. Available credit records show that Applicant obtained a private student loan of \$21,126 (GE 1) and federal student loans totaling \$14,125.<sup>1</sup> (GEs 1-3; AE A.)

After attending college year round for two years, Applicant elected to opt out of the final year of his studies, about 20 credits short of his bachelor's degree. (Tr. 22, 40.) He did not want to pay money for classes that were required for his degree but were not within his field of interest. (Tr. 40.) He did not enroll for the fall semester 2006, so his student loans

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<sup>1</sup> According to Applicant, he took out one federal student loan that was separated into three accounts for collection purposes. (Tr. 17-19, 21.) Applicant's May 28, 2014 credit report (GE 3) and his recent loan statement (AE A) show four separate federal student-loan accounts: two loans opened in October 2004 for \$2,625 (SOR ¶ 1.c) and \$4,000 (not alleged), and two loans opened in June 2005 for \$3,500 (SOR ¶ 1.a) and \$4,000 (SOR ¶ 1.b). As of October 2009, three of the loans had been placed with the creditor identified in SOR ¶¶ 1.a-1.c. One of the two \$4,000 student loans was not alleged in the SOR, presumably because it was listed only with the original lender as having a zero balance after being placed for collection. All four federal student loans were reported on his October 2015 credit report. His private student loan was not listed on his credit record. (GE 2.)

came due around August 2006. Applicant began working part time as a chef in September 2006. Earning only \$12 an hour (Tr. 35), he was able to defer his student loans for approximately one year. (GE 1; Tr. 22.) Applicant left his job in October 2007 because he wanted to pursue a more technical job. (GE 1.)

Applicant was unemployed from November 2007 until March 2008. He traveled to South America for three months for “exploring and what not.” He lived off about \$2,000 in savings. (Tr. 36.) On his return to the United States in March 2008, Applicant moved to a distant state to look for a job in his field. He made a few payments toward his federal student-loan debt after he moved, but no payments after August 2006 on his private student loan.<sup>2</sup> (GE 1; Tr. 23-25.) In March 2008, Applicant began working as an audio-visual specialist at \$19 an hour. (GE 1; Tr. 37.) In April 2008, he purchased a new car with a \$21,306 automobile loan. (GE 2; Tr. 37.) With car payments at \$409 per month (GE 2), he was able to make only a few \$100 payments on his federal student loans, but the lender wanted more. He began receiving collection calls for student loan accounts that he could not identify or track because his information about the accounts differed. (GEs 1-3; Tr. 25-26.) In October 2009, federal student loan debt totaling \$10,652 was placed for collection due to nonpayment after September 2008. (GE 3.)

In August 2011, Applicant tired of struggling to pay his car loan. He sold the vehicle for what he owed on the loan, and he bought a car with cash. (GE 3; Tr. 42.) Around November 2011, Applicant resigned from his job and moved back home. His mother had been diagnosed with a serious illness, and he felt “compelled” to rejoin his family. (Tr. 38.) Applicant was unemployed until July 2012. From December 2011 to February 2012, he was again in South America, reportedly for education and tourism. (GE 1.) It is unclear how he supported himself during that time. He lived with his parents when he returned, and in July 2012, he began working for his current employer as a part-time intern at \$20 an hour without benefits. (GE 1, Tr. 29, 39.) He continued to receive collection calls about his student loans. (Tr. 26.) He made no payments, although apparently his federal tax refunds were taken and applied to his federal student loan delinquency. (GE 1.)

Applicant moved from his parents’ home into his own apartment in February 2013. (GE 1.) On May 13, 2014, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to inquiries concerning whether he had been delinquent on any routine accounts in the last seven years, Applicant disclosed that he had defaulted on a private student loan that was for \$21,127 originally but because of interest had accrued to \$32,892. He indicated that he had made no payment since August 28, 2006, but that a collection agency has offered to settle for \$9,000. Applicant also admitted that he had defaulted on \$12,550 in federal student loan debt because he could not afford the monthly payments demanded by the creditor. However, the lender had intercepted his tax refund monies over the past few years and applied them to his balance. Applicant expressed his intent to resolve his student loans in the near future. (GE 1.)

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<sup>2</sup> Applicant testified that he made \$100 monthly payments on both his federal and his private student loans in early 2008. (Tr. 23.) However, he indicated on his SF 86 that he made no payment on his private student loan after August 28, 2006. (GE 1.)

After Applicant began working as a full-time employee in July 2014, he contacted his student-loan lenders. Around October 2014, he began repaying \$13.50 per month to show his good faith as a precondition for acceptance into a loan rehabilitation program for his federal student loans. Applicant now recalls that he had to make six months of consecutive payments (Tr. 29-30); although when he answered the SOR, he indicated that he had to make nine consecutive monthly payments. Applicant moved to his current residence around June 2015, and he did not notify his student loan servicer about his new address. (Tr. 41, 46.) After he finished the good-faith payments, the loan servicer sent correspondence to him about the rehabilitation program at his parents' home. By the time he received it, he was already three months late in making his first payment under the loan rehabilitation program. (Tr. 44-45.) Available credit record information shows that Applicant's student loans were considered delinquent in July 2015. (GE 2.)

Applicant was accepted into the loan rehabilitation program after he paid the three months that he owed, but he incurred late fees. (Tr. 44-45.) As of October 2015, he was \$93 past due on the loan in SOR ¶ 1.b (balance \$2,319), \$186 on the \$4,000 loan not alleged (balance \$4,638), \$81 on the loan in SOR 1.a (balance \$2,029), and \$122 on the loan in SOR ¶ 1.c (balance \$3,044). The loan servicer's record (AE A) shows that the principal balances of the June 2005 loans (SOR ¶¶ 1.a and 1.b) had been reduced by a total of \$3,625, presumably because of earlier payments by Applicant and his tax refunds. As of November 10, 2015, Applicant's federal student loan balance was \$12,061. His monthly payments under the loan rehabilitation program are \$121.52. With late fees, he owed a first payment of \$150.43 due December 8, 2015, under the new rehabilitation program. (AE A; Tr. 30.) Applicant's uncorroborated testimony is that he made the payment on November 17, 2015. (Tr. 31, 47.) Applicant plans to set up the payments by automatic deduction from his bank account, but he has not yet done so. (Tr. 46-47.)

In April 2015, Applicant was given a settlement offer of \$7,000 for his private student loan balance, which was approximately \$32,937 as of May 2014. He was unable to make the payment within the ten days specified in the offer. The lender now wants \$8,000 in a lump sum to settle his student loan. Applicant has approximately \$5,000 in savings that could be paid toward his student loan, but it would eliminate his "safety net." Applicant's hourly wage with a defense contractor is \$25. He sets aside \$200 from his bi-weekly paycheck for savings. (Tr. 31-34.) His parents have not been able to lend him the funds to settle his private student loan. His plan is still to settle his private student loan with a lump-sum payment. (Tr. 35.)

Applicant's rent is \$600 per month plus utilities. (Tr. 40.) He has telephone, car insurance, and other standard living expenses, such as food and gasoline. (Tr. 42.) He does not have any open credit-card accounts or outstanding loans on his credit record apart from his student loans. (GE 2.)

## Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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 access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 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 that 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. Section 7 of Executive Order 10865 provides that 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 about financial considerations is articulated in AG ¶ 18:

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Guideline F concerns are established by Applicant's failure to make timely payments on \$14,125 in federal student loans and a \$21,127 private student loan. Due to its high interest rate, his private student-loan debt had increased to \$32,937 as of May 2014. Disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are implicated.

The student loans were obtained more than ten years ago, and there is no record of delinquency on other accounts, such as utilities or rent. Even so, it is difficult to apply AG ¶ 20(a), "the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual's current, reliability, or good judgment." While Applicant had made the payments required for acceptance into a rehabilitation program for his federal student loans as of his Answer to the SOR in June 2015, his federal loans were delinquent from July 2015 through September 2015 for his failure to make the initial payments under the loan rehabilitation program. As of his November 18, 2015 hearing, Applicant had not made any payments in several years toward his seriously delinquent private student loan.

Applicant struggled to pay his student loans largely because of low income. When his student loans first came due, he was working as a part-time chef at \$12 an hour. He was unemployed and lived off savings from November 2007 until March 2008. As an audiovisual specialist from March 2008 to November 2011, he earned \$19 an hour, but he was also living in an expensive region of the country. He made some \$100 payments toward his federal student loan, but it was apparently less than the monthly payment required by the lender. After he began receiving collection calls about accounts that he could not reconcile with his information, he largely ignored the student loans. He resigned from his job in November 2011, after his mother was diagnosed with a serious illness, and was unemployed until July 2012, when he began working for his employer in July 2012 as an intern at \$20 an hour without benefits. Low income and his mother's illness are factors that implicate mitigating condition AG ¶ 20(b), which provides:

(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), and the individual acted responsibly under the circumstances.

Yet, Applicant also made decisions that were not fully financially responsible. His student loans came due when they did because he left college early, 20 credits short of a bachelor's degree. He used \$2,000 in accumulated savings to travel to South America for

three months from late 2007 to early 2008. He bought a new car in April 2008, one month into his job, taking on a monthly car payment of \$409 when he earned only \$19 an hour, knowing that he had student loan payments to make. He left his job for home in November 2011 when his mother was diagnosed with a serious illness, but he then returned to South America in December 2011 for a couple of months. It is unclear how he paid for his travel and support when he was there, but one has to question his judgment in taking an extended trip for education and tourism when his student loans were in collection and not being repaid. AG ¶ 20(b) does not fully mitigate the financial concerns.

Applicant is credited with contacting his student-loan lenders after he became a full-time employee with a defense contractor in July 2014. He made the payments, albeit of only \$13.50 per month, for acceptance into a loan rehabilitation program for his federal student loans. He bears some responsibility for the recent delinquency on his federal student loans from July 2015 to September 2015, in that he should have kept his student loan servicer apprised of his current address. However, he exhibited some good faith in contacting the lender after he received the correspondence about the loan rehabilitation and then making the catch-up payments. His recent efforts to address his federal student loans establish mitigating conditions AG ¶¶ 20 (c) and 20(d), which provide as follows:

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control, and

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

Favorable findings are warranted as to his federal student loans in SOR ¶¶ 1.a-1.c because of his efforts to rehabilitate those loans. However, Applicant has yet to settle or make payments on his delinquent private student loan, which had accrued to \$32,937 as of May 2014. While he is not required to pay off each debt in the SOR to be eligible for a security clearance, he is required to demonstrate that he has an established plan to resolve his financial issues and that he has taken significant actions to implement his plan. See ISCR Case No. 07-06482 (App. Bd. May 21, 2008). He was saving about \$200 per paycheck toward settling the loan with a lump-sum payment. As of his hearing, he was only about \$3,000 short of the \$8,000 then required to settle. It had increased from \$7,000 in April 2015. However, he was also reluctant to wipe out his “safety net” by using all of his savings to make the lump-sum payment. He has made only his first of his monthly \$121.62 payments under the rehabilitation program for his federal student loans and no payments since August 2006 toward his private student loan. After considering all the facts and circumstances, he has not made enough progress toward resolving his student-loan delinquency at this point to adequately mitigate the security risk.

### **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 his conduct and

all the 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.

The analysis under Guideline F is incorporated in my whole-person assessment, but some aspects warrant additional comment. Applicant exhibited poor judgment in disregarding his student loans for several years. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9<sup>th</sup> Cir. 1990). Applicant has taken an important first step to address his federal student loans, but it is not enough to mitigate the security concerns, especially given their delinquent status in the summer of 2015, and no payments toward his private student loan since August 2006. This decision should not be construed as a determination that Applicant cannot or will not attain the rehabilitation necessary to justify the award of a security clearance in the future. However, based on the evidence presented, it would be premature to grant security clearance eligibility for Applicant at this time.

### **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.c:	For Applicant
Subparagraph 1.d:	Against 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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Elizabeth M. Matchinski  
Administrative Judge