



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 17-01392
	)	
Applicant for Security Clearance	)	

**Appearances**

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

07/16/2019

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his financial problems. However, his information was not sufficient to mitigate the security concerns raised by the Government’s adverse information about his personal conduct and his criminal conduct. His request for a security clearance is denied.

**Statement of the Case**

On December 2, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security

clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On August 22, 2018, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines for personal conduct (Guideline E), criminal conduct (Guideline J), and financial considerations (Guideline F). The current adjudicative guidelines were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing. I received the case on March 11, 2019, and convened the requested hearing on April 17, 2019. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 11. Applicant testified and proffered Applicant Exhibit (AX) A. After the hearing, Applicant timely submitted a credit report, dated April 16, 2019 (AX B); proof of a current automobile insurance policy (AX C); a copy of his cellphone bill for March 8, 2019, through April 7, 2019 (AX D); and information regarding a U.S. Department of Treasury wage garnishment (AX E). All exhibits were admitted without objection, and the record closed on April 19, 2019. DOHA received a transcript of the hearing (Tr.) on May 6, 2019.

### **Findings of Fact**

Under Guideline E, the Government alleged that in July 2015 (SOR 1.a), September 2013 (SOR 1.c), July 2013 (SOR 1.d), and September 2012 (SOR 1.g), Applicant was charged with criminal domestic violence. It also was alleged that in April 2004, Applicant was charged with sexual contact with a minor (SOR 1.k). Under Guideline J, these allegations were cross-alleged as criminal conduct (SOR 2.a).

Also under Guideline E, the Government alleged that in April 2015, Applicant was involuntarily terminated from his employment with a defense contractor (SOR 1.b) for reasons of performance, attendance, and timekeeping as specified in SOR 1.b(i) – 1.b(iv). It was also alleged that in February 2013, Applicant was involuntarily terminated from a different defense contractor for timekeeping violations (SOR 1.e), and that in November 2012, he had submitted a falsified resume as part of his application for employment with the SOR 1.e contractor (SOR 1.f). The Government further alleged that Applicant was involuntarily terminated from jobs in 2008 (SOR 1.h), 2007 (SOR 1.i), and 2006 (SOR 1.j); and that Applicant has been evicted from at least three different residences (SOR 1.l).

Finally, under Guideline E, it was alleged that Applicant intentionally made false official statements to the Government in his December 2015 e-QIP by claiming that he left the defense contractor job referenced in SOR 1.e and 1.f by mutual agreement (SOR 1.m); and by repeating that statement to Government investigators during subject interviews in February 2016 (SOR 1.n) and July 2016 (SOR 1.o).

Under Guideline F, the Government alleged that Applicant owed \$8,451 for 15 delinquent or past-due debts (SOR 3.a – 3.o).

In response to the SOR, Applicant admitted, with explanations, all of the allegations therein. (Answer; Tr. 12 – 14) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 34 years old. He earned his general education diploma in May 2004. He matriculated at a college-level technical school in January 2005 and earned an associate's degree in computer information systems in August 2014. Applicant first received a security clearance in 2010. He started working in information technology (IT) positions starting in December 2012, and he has worked for his current employer since May 2016. Appellant worked as a defense contractor in Afghanistan and Kuwait for a few months in 2012 and 2015, respectively. (GX 1; GX 6)

Applicant was married from July 2007 until divorcing in November 2015. He has one child from that marriage, which he has described as "horrible." Applicant also had two children with a former girlfriend in 2003 and 2004. He also has a 13-year-old child and a three-year-old child with two other former girlfriends. (GX 1; GX 6; Tr. 42, 76 – 79)

Applicant fathered his two oldest children when he was 16 and 17 years old, and their mother was 13 and 14 years old. The children's maternal grandmother was aware of, and consented to, Applicant's relationship with her daughter. After the older child was born, the grandmother applied for food stamps for her daughter and grandchild. When she again applied for food stamps after the younger grandchild was born, state family services threatened to charge her with neglect of her daughter if the grandmother did not file charges of illegal sexual contact with a minor against Applicant. Under state law where those events occurred, the mother of Applicant's children was legally incapable, at age 13 and 14, of consenting to sexual intercourse with Applicant. The grandmother subsequently swore out a warrant against Applicant, who was released on his own recognizance after turning himself in. The charges were later entered as *nolle prosequi* because no paternity test was ever conducted and no other physical evidence was gathered. Applicant admits the children are his and he is trying to support them. (Answer; GX 1; GX 2; GX 7; Tr. 51 – 53)

Between September 2012 and July 2015, Applicant was arrested and charged with criminal domestic violence stemming from arguments that became physical altercations with his ex-wife (SOR 1.a and 1.e) and with two ex-girlfriends (SOR 1.c and 1.d). In each case, the charges were dismissed because the victims did not appear in court as witnesses against Applicant. In each case, Applicant struck or shoved the victims, one of whom was pregnant at the time of the assault. Applicant claims that he is unlikely to engage in such conduct in the future because he has received counseling as recently as April 2018, and because he no longer has contact with his ex-wife or his ex-girlfriends. However, Applicant interacts with each of them when required regarding matters of child support and visitation. He attributed his 2012 conduct to trouble adjusting after being in

Afghanistan for a few months, speculating that he was suffering from post-traumatic stress disorder (PTSD). Applicant was never clinically diagnosed with PTSD and he did not provide any documentation about the counseling he has received. (Answer; GX 1; GX 6; GX 8; Tr. 42 – 46, 57 – 76, 121 – 124)

Applicant also has experienced financial problems over the past 15 years. Between July 2007 and November 2009, he and his ex-wife were evicted from three different residences for failing to pay rent as required. When they divorced in 2015, Applicant's mortgage was foreclosed because his ex-wife, who retained the property through their divorce agreement, failed to make the required monthly payments. Applicant recently was able to obtain a mortgage modification and recover the house. As of December 2017, Applicant owed the debts alleged in SOR 3.a – 3.o. Most of those debts resulted from his marriage; however, he also incurred delinquent debts because he has broken at least two leases since his divorce. The debts at SOR 3.a and 3.j are two such debts and they remain unresolved. Applicant successfully disputed several of the debts alleged in the SOR as being his ex-wife's responsibility. Further, Applicant claims his current finances are sound. He cites his increased annual salary of \$98,000 and his efforts to clean up his credit history with the help of a credit repair firm, and his payment of medical debts through an employer-sponsored health savings account as evidence of mitigation of the financial security concerns raised in the SOR. A credit report dated April 16, 2019, shows only three delinquent accounts. Two of the debts listed (SOR 1.h and 1.i) were paid off in March 2019. He also is in good standing with the creditors listed in SOR 1.b and 1.c, and has repaid the debt alleged at SOR 1.m. Another debt for a \$3,237 delinquent cellphone account, not alleged in the SOR, is being disputed by Applicant. He claims it was opened by his ex-wife. It is still pending resolution. Available information tends to support his claimed disputes of debts from his marriage, and that he already was trying to resolve his debts when the SOR was issued. (Answer; GX 1 – 5; GX 6; AX A – E; Tr. 54 – 56, 94 – 114)

Between April 2014 and April 2015, Applicant was employed by Company A, a defense contractor who sponsored his request to renew his eligibility for a security clearance. Applicant left that job under adverse circumstances, but the ensuing background investigation continued because Applicant found work with another defense contractor. While working at Company A, Applicant was repeatedly counseled about his poor performance, time-keeping and attendance discrepancies, and various violations of company policies. Despite being placed on a performance improvement plan (PIP), Applicant was either unable or unwilling to comply with company rules. SOR 1.b alleged that Applicant was terminated from that job in April 2015. Available information shows that he left that job voluntarily when it became apparent he would be fired. Applicant went on to work for three other companies, including his current employer, without apparent incident. Applicant's current supervisor provided a positive recommendation based on Applicant's performance over most of the past three years. (Answer; GX 1; GX 6; GX 9; AX A; Tr. 38 – 39, 44 – 45, 90 – 94)

Between October 2006 and April 2008, Applicant was fired from three different jobs. None of those terminations were due to reduction-in-force layoffs or other factors beyond Applicant's control. Each termination was due to poor job performance or violation of employer policies, or a combination of the two. In November 2012, Applicant applied for a position with Company B, another defense contractor. In his application and an accompanying resume, he stated that he had an IT-related associate's degree, with a 3.0 grade point average (GPA). He also stated that the first of the aforementioned involuntary terminations in October 2006 occurred because the warehouse where he worked had been closed. Both statements on his November 2012 job application were false, but it was only after he was confronted on cross-examination with the Government's information that he admitted submitting false information in his job application. As to his associate's degree, Applicant did not receive his degree until August 2014. At the time he applied to work at Company B, he was on academic probation with a 1.92 GPA. One of the reasons for being placed on probation was a well-documented instance of plagiarism. Applicant's tenure with Company B was marked by unsatisfactory performance, security violations, and timekeeping and attendance problems. Applicant was counseled verbally and in writing on multiple occasions. As alleged in SOR 1.f, he was fired by Company B on February 2, 2013. (GX 10; GX 11; Tr. 50 – 51, 79 – 90)

When Applicant submitted his December 2015 e-QIP, he stated he left Company B by mutual agreement because Company B's government customer decided to no longer fund Applicant's position. During a subject interview with a government investigator on February 24, 2016, Applicant again stated that he left Company B by mutual agreement because of lack of funding. Applicant was re-interviewed on July 25, 2016. In that interview, he again stated that he left Company B by mutual agreement because of lack of funding, before being confronted with his Company B employment records. Those records contained detailed documentation of management's actions in response to Applicant's poor performance and other on-the-job issues, including disregard for security procedures. When Applicant testified about his termination from Company B, he again stated that he left by mutual agreement because of funding issues. His uncorroborated testimony about the alleged security violation also directly contradicted the contemporaneous records produced by the Government. Records generated by Company B management and human resources personnel at the time of Applicant's employment there make no mention of a lack of funding, and they do not indicate that the end of Applicant's employment was a mutually agreed upon event. Applicant was fired from Company B for specific, well-documented reasons. Further, in his Answer, Applicant averred Company B did not have any paperwork signed by him regarding his dismissal, yet the Government's information contains several items, such as counseling records and the actual termination paperwork, signed by Applicant between December 2012 and February 2013. As alleged in SOR 1.m – 1.o, his statements about that event in his e-QIP and in two subject interviews constituted intentional false official statements to an agency of the United States. I also find that his written response and his testimony about the SOR 1.m – 1.o allegations are intentional false official statements. I did not find credible his testimony about his academic problems and much of his employment history. (Answer; GX 1; GX 6; GX 10; Tr. 117 – 120)

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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 presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (See Egan; AG ¶ 2(b))

## Analysis

### Financial Considerations

The Government established that Applicant incurred delinquent or past-due debts totaling \$8,451. As of the close of the adjudication of the information obtained in his background investigation, much of that debt remained unresolved. That information reasonably raises a security concern about Applicant's finances that is articulated at 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

As to mitigation, Applicant established that most of his debts arose from his failed marriage. He also showed that before the SOR was issued, he had taken steps to contest the validity of debts his wife opened in his name and to pay his medical debts. Only two debts alleged in the SOR remain unresolved; however, available information about Applicant's finances supports application of the following AG ¶ 20 mitigating conditions:

- (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 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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is meeting all of his current financial obligations, has not incurred new delinquencies in the past two years, and is unlikely to experience such problems in the future. On balance, available information is sufficient to mitigate the security concerns under this guideline.

### **Criminal Conduct**

Applicant was charged with felony sexual contact with a minor in 2004 after he fathered two children with a girl who was 14 years old or younger. Although he has acknowledged his misconduct, the charge was not prosecuted because of lack of evidence. Between 2012 and 2015, Applicant was charged on four occasions with criminal domestic violence after two physical altercations with his ex-wife and two altercations with ex-girlfriends. None of those charges were prosecuted, but this record, including Applicant's testimony, establishes that there were no misunderstandings or false complaints by the victims. Applicant physically assaulted each of the women involved. This information reasonably raises a security concern about criminal conduct that is expressed at AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

More specifically, the record requires application of the following AG ¶ 31 disqualifying conditions:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

I also have considered the following AG ¶ 32 mitigating conditions:



(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant last engaged in criminal conduct almost four years ago. He claimed he is unlikely to repeat his conduct because he has matured and he no longer has contact with any of the women he assaulted; however, he was 30 years old at the time of his most recent arrest, and he still interacts with his ex-wife and at least one ex-girlfriend regarding matters related to their children. He also claimed he has received counseling about his conduct, but he did not provide any information about that counseling or its results. For these reasons, and because of unmitigated security concerns about Applicant's personal conduct (discussed under Guideline E, below), I conclude none of the AG ¶ 31 mitigating conditions apply. The security concerns under this guideline are not mitigated.

## **Personal Conduct**

The Government's information established that Applicant has a long history of unacceptable conduct that directly undermines confidence in his judgment and his trustworthiness. The information about his employment history, his criminal conduct, and his multiple false official statements raises a security concern about personal conduct states at AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

More specifically, the record requires application of the following AG ¶ 16 disqualifying conditions:

(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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of: . . .

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

I also considered the following pertinent AG ¶ 17 mitigating conditions:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

I conclude that the record does not support application of any of the mitigating conditions. Applicant has not made any prompt, good-faith effort to correct his earlier false official statements. To the contrary, in response to the SOR and at hearing, he repeated his false claims about the reason for his dismissal from Company B. He did not establish that his false answers to e-QIP questions were the product of advice from an authorized source. Applicant's information did not establish that he has been rehabilitated with respect to his criminal conduct. Although more than four years has passed since his last arrest, his continued willingness to make false statements, and the lack of information about his counseling sustain doubts about his judgment.

An ongoing security concern is Applicant's long record of poor job performance, including repeated violations of rules and regulations. Although he recently has experienced more employment stability and has the support of his current supervisor, the length of Applicant's adverse employment record, and his repeated willingness to make false statements about this part of his background, preclude a conclusion that such events will not recur. The security concerns under this guideline are not mitigated.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive information about Applicant's recent job performance and reputation in the workplace. Nonetheless, this record presents a compendium of adverse information over the past 15 years that requires more substantial mitigating information to overcome the doubts raised by his personal conduct and criminal conduct.

Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the granting of access to classified information.

### **Formal Findings**

Formal findings 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 E:	AGAINST APPLICANT
Subparagraphs 1.a - 1.o:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 3.a – 3.o:	For Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE  
Administrative Judge