



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 18-02222  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Dan O’Reilly, Esq., Department Counsel  
For Applicant: *Pro se*

10/10/2019

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 28, 2017. On December 31, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on February 7, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 2, 2019, and

the case was assigned to me on June 21, 2019. On August 7, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 29, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until September 13, 2019, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on September 9, 2019.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b, 1.d, 1.e, and 1.l. He denied the allegations in SOR ¶¶ 1.a, 1.c, 1.f-1.k, 1.m, and 2.a. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 30-year-old senior software quality assurance engineer employed by a federal contractor since May 2019. He served in the U.S. Navy from March 2010 to March 2014 and received an honorable discharge. He testified that he was unemployed for about two months after his discharge from the Navy. (Tr. 25.) He worked for a non-federal employer until August 2015, was unemployed for about three months, and then worked for federal contractors until he was hired for his current position. (Tr. 29.) He received a security clearance in September 2009.

Applicant married in October 2010 and divorced in July 2015. He has two children, ages six and one. The older child lives with her mother, and Applicant pays child support of \$598 per month for her. The younger child, whose mother is Applicant's current cohabitant, lives with Applicant. (Tr. 22.)

Applicant attended a university from February 2016 to April 2017, a community college from May to August 2017, and a university from April 2017 to the present. He has not received a degree.

While on active duty in the U.S. Navy, Applicant received nonjudicial punishment for larceny in August 2013. He was restricted for 25 days, required to perform extra duties for 45 days, forfeited \$243 pay per month for two months, and was reduced from pay grade E-4 to E-3. According to Applicant, he was with another sailor when the other sailor stole an item of clothing from the Navy Exchange. Applicant claimed that he was unaware of the theft by the other sailor. (GX 2 at 16.) He answered "No" to a question in his SCA asking if, during the last seven years, he had been subject to court-martial or other disciplinary procedure under the Uniform Code of Military Justice such as Article 15 or Captain's mast. He did not disclose his August 2013 nonjudicial punishment (GX 1 at 22.) The documents reflecting the nonjudicial punishment were not introduced in evidence, but Applicant admitted that he received the nonjudicial punishment in his answer to the SOR, during an interview by a security investigator, and at the hearing.

In January, March, and April 2018, Applicant was questioned by a security investigator about his SCA. In his sworn responses to DOHA interrogatories in November 2018, he stated that the summary of his March 2018 interview with the investigator was inaccurate regarding his nonjudicial punishment. His comments included the following:

When initially asked about any court martials (sic) or non-judicial punishments from the interview, I disclosed the information saying "Yes." On 8-27-2013, I was involved in an incident in which I unknowingly aided an individual in stealing clothing from the Navy Exchange. I was found guilty of Article 121–larceny, was reduced to the rank of E-3, and spent 45 days confined to the ship’s quarters.”

(GX 2 at 2.)

In his answer to the SOR, he stated that he mistakenly thought that the question dated back five years and not seven years. This explanation was unpersuasive, because his punishment was imposed within five years of the date he submitted his SCA. He also stated in his SOR answer that he was not reduced in rank or pay, but he stated in his response to DOHA interrogatories that he was reduced in rank.

At the hearing, Applicant was vague about his reason for not disclosing the nonjudicial punishment. He testified that he believed that he was being punished for not supervising the sailor who stole the clothing and not being punishment for larceny. He testified that he did not know how to justify his claim in his SOR answer that he thought the question covered only five previous years. He testified that he did not believe that the nonjudicial punishment would be reflected in his military record. (Tr. 49-51.)

The SOR alleges 13 delinquent debts totaling about \$56,573. The debts are reflected in credit reports from January 2018 and August 2018 (GX-3; GX 4.) The evidence concerning the debts alleged in the SOR is summarized below.

**SOR ¶ 1.a: automobile loan charged off in January 2016 for \$34,072.** In his SOR answer, Applicant stated that he was disputing this debt. He testified that this debt was for an automobile purchased for his ex-wife before they divorced. When their divorce was final, she stopped making the payments. The loan was in Applicant’s name, and he acknowledged at the hearing that he was responsible for making the payments. He testified that was attempting to negotiate a payment agreement but had not yet been successful. (Tr. 14-15.)

**SOR ¶ 1.b: automobile loan charged off in April 2018 for \$13,043.** Applicant testified that this debt was for a voluntary repossession after a dealer refused to honor a recall notice on a defective transmission because he had purchased it from a third party rather than a dealer. (tr. 45.) He testified that this debt is being handled by a debt-consolidation company, and that the creditor had agreed to a 36-month repayment plan. (Tr. 15.) He did not submit any documentation of this payment plan. In his post-hearing submission, he presented a document reflecting an offer to pay \$250 per month on this

debt. (AX C.) He did not submit any evidence that the offer was actually submitted and accepted by the creditor and no evidence of any payments. He also submitted a document, apparently from a law firm, listing this debt, but no evidence of payments or a payment agreement. (AX D.) The debt is not resolved.

**SOR ¶ 1.c: telecommunications account placed for collection of \$1,718 in December 2015.** Applicant testified that he disputed this debt because he was being charged for two cellphones instead of one. (Tr. 44.) He testified that the debt is no longer reflected on his credit report. (Tr. 15.) However, it is reflected in the August 2018 credit report. (GX 4 at 2.) The debt is not resolved.

**SOR ¶ 1.d: debt to electronics institute placed for collection of \$1,672 in October 2015.** Applicant incurred this debt for online computer classes, and it is included in his debt-consolidation plan. He testified that the creditor has agreed to a 36-month repayment plan. (Tr. 15-16.) In his post-hearing submission, he submitted a document, apparently from a law firm, listing this debt, but no evidence of payments or a payment agreement. (AX D.) The debt is not resolved.

**SOR ¶ 1.e: medical bill charged off for \$1,585 in December 2012.** Applicant testified that this medical bill was for his oldest daughter, that it is included in his debt-consolidation plan, and the creditor has agreed to a 36-month repayment plan. (Tr. 16.) In his post-hearing submission, he provided a copy of his credit report reflecting that the debt was paid. (AX B.)

**SOR ¶ 1.f: credit-card account charged off for \$1,320 in January 2012.** In his SOR answer, Applicant stated that this debt was disputed and is no longer reflected in his credit reports. After the hearing, Applicant submitted a copy of his credit report reflecting that the debt was paid. (AX A.)

**SOR ¶ 1.g: utility bill placed for collection of \$210 in November 2017.** In his SOR answer, Applicant stated that he disputed this debt and all late fees were dropped, and that he had agreed to make two \$73 payments in February 2019. Applicant testified that this debt has been paid in full. (Tr. 16.) He submitted documentation of the payment in his answer to the SOR.

**SOR ¶¶ 1.h and 1.i: telecommunications accounts charged off in November 2017 for \$128 and \$70.** In Applicant's SOR answer, he stated that both debts would be paid in March 2019. At the hearing, he testified that these two debts have been paid in full. (Tr. 16.) He submitted no documentation to support his testimony.

**SOR ¶ 1.j: child-support arrearage of \$1,505.** Applicant testified that this arrearage occurred while he was unemployed for three months. He testified that the arrearage has been paid in full and his child-support payments are current. (Tr. 17.) The debt is not reflected in the August 2018 credit report. It is resolved.

**SOR ¶ 1.k: charge account past due for \$159.** In Applicant's SOR answer, he stated that the debt would be paid in March 2019. At the hearing, testified that this debt was paid in full. (Tr. 17.) After the hearing, he submitted a copy of his credit report reflecting that the debt was paid. (AX A.) It is resolved.

**SOR ¶ 1.l: gym membership referred for collection of \$932.** Applicant testified that he made a payment agreement in March 2019, but he has now disputed the account because the gym was notified to terminate the payments while he was being deployed overseas, but they continued to bill him. (Tr. 17.) The debt is not listed among the debt being handled by his debt-consolidation company. (AX C.) He provided no documentation of his dispute. The debt is not resolved.

**SOR ¶ 1.m: medical bill placed for collection of \$159.** Applicant testified that this bill has been paid in full. (Tr. 17-18.) He did not submit any documentary evidence supporting his testimony.

Applicant currently earns \$92,000 per year. (Tr. 25.) After paying all living expenses, he has a net monthly remainder of about \$1,400. (Tr. 32.) He testified that receiving the SOR in December 2018 prompted him to take action to resolve his debts. (Tr. 37.) When asked why he waited so long to take action after he was questioned by a security investigator about his debts in January 2018, he said, "I don't have a response." (Tr. 38.) In May 2019, he made a 36-month contract with a debt-consolidation company, and he pays it \$380 per month to resolve his delinquent debts. (Tr. 33.)

## Policies

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and the evidence submitted at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's two short periods of unemployment and his marital breakup were conditions largely beyond his control. However, he has not acted responsibly. He admitted at the hearing that he did not begin to seriously address his financial situation until he received the SOR. An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(c) is not established. Applicant has engaged the services of a debt-resolution company to negotiate and resolve his delinquent debts, but there is no evidence that he has received the financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established for the child-support arrearage alleged in SOR ¶ 1.j. Applicant was regularly paying child support until he fell behind during a period of unemployment, and his payments are now current. This mitigating condition is not established for the remaining debts alleged in the SOR. The debts alleged in SOR ¶¶ 1.e, 1.f, 1.g, and 1.k have been paid, but they were paid only after Applicant received the SOR and realized that his security clearance was in jeopardy. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(e) is not established. In Applicant's SOR answer, he asserted that he disputed the debts alleged in SOR ¶¶ 1.a, 1.c, 1.f, and 1.g, but he submitted no documentary evidence to substantiate the basis for the disputes.

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

The concern under this guideline is set out in 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 relevant disqualifying condition is AG ¶16(a):

[D]eliberate 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 a falsification allegation is controverted, as in this case, the Government has the burden of proving it. 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. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).



Applicant has given multiple and conflicting answers for his failure to disclose his nonjudicial punishment for involvement in a larceny. None of his explanations are plausible or persuasive. AG ¶ 16(a) is established.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

AG ¶ 17(a) is not established. Applicant submitted his falsified SCA in December 2017. He did not correct his omission of the nonjudicial punishment during a follow-up interview with a security investigator in January 2018. He did not attempt to correct his omission until a second follow-up interview after he was confronted with the evidence.

AG ¶ 17(c) is not established. Applicant's falsification was not minor, because falsification of an SCA "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.) Although Applicant submitted his SCA almost three years ago, his falsification is not mitigated by the passage of time because it involved his current and most recent SCA. His falsification was arguably infrequent, but it was followed by implausible and unpersuasive explanations for it. It did not occur under unusual circumstances.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts and lack of candor during the security-clearance process.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.i and 1.k-1.m: **Against Applicant**

Subparagraph 1.j: **For Applicant**

Paragraph 2, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 2.a: **Against Applicant**

### **Conclusion**

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

LeRoy F. Foreman  
Administrative Judge