



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



In the matter of: )  
)  
) ISCR Case No. 19-00337  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esq., Department Counsel  
For Applicant: *Pro Se*  
01/31/2020

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant mitigated security concerns under Guideline F (Financial Considerations), but he failed to mitigate the security concerns under Guideline E (Personal Conduct). National security eligibility for access to classified information is denied.

**Statement of the Case**

In October 2015, July 2010, and May 2005, Applicant submitted security clearance applications (SCA). On June 7, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 11, 2019, and he provided character reference letters, military service documents, and supporting financial documents with his response. He admitted all of the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on September 16, 2019. On September 25, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for November 13, 2019.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-10, which were admitted into evidence without objection. Applicant did not submit additional documentation, but asked that I consider the documents he previously submitted with his SOR response. Applicant testified, and I held the record open until December 1, 2019, in the event either party wanted to submit additional documentation. DOHA received the hearing transcript (Tr.) on November 26, 2019. On December 3, 2019, Applicant provided seven documents, which I labeled as Applicant's Exhibits (AE) A through G. I admitted into evidence all seven documents without objection, and the record closed on December 4, 2019.

### **Findings of Fact**

Having thoroughly considered the evidence in the record, I make the following findings of fact: Applicant is 33 years old. He recently earned a bachelor's degree in cyber security, and he is currently pursuing a master's degree. He married in 2006 and has three children. He enlisted in the U.S. Navy in 2006, and he received a top secret security clearance in 2010. In 2014, Applicant received an honorable discharge from the Navy. Since 2015, he has worked for a DOD contractor as a senior cloud monitoring subject matter expert, and he makes approximately \$132,000 annually. (Tr. 18-22, 26, 42)

In 2016, Applicant became a part-owner of a business venture, and he is currently working to obtain government contracts for cyber security work. Applicant testified that he is in the process of leaving his current employer so that he can work full-time for his company with an annual salary of about \$220,000. He admitted his company is in the process of pursuing a DOD facility clearance. Applicant possesses a top secret security clearance and at the time of the hearing, he was considered a key management personnel for his own company. (Tr. 22, 63-68)

SOR allegation ¶ 1.a alleges that Applicant falsified information on his October 2015 SCA when he answered "No" to the following question: "Section 25- Investigations and Clearance Record – Denied Clearance Have you EVER had a security clearance eligibility/access authorization denied, suspended, or revoked?" Applicant had his Sensitive Compartmented Information (SCI) access revoked in June 2015 by a U.S. government agency. In his response to the SOR he denied intentionally falsifying this question, as he thought his Visitor Access Request (VAR) was denied due to failing a polygraph on three separate occasions. Until the receipt of the SOR, he did not realize that his SCI access was revoked by a Federal government agency. At the hearing, Applicant testified that he answered this question "No" because he thought the question pertained to security clearances only, and he never

had a security clearance denied, suspended, or revoked. It was his impression that he was walked out of a building after the Federal government agency no longer supported his VAR. (Tr. 23-24; SOR response)

SOR ¶ 1.b alleges that Applicant falsified information on his July 2010 SCA when he answered “No” to the following question: “Section 23 – Illegal Use of Drugs or Drug Activity In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC, narcotics, stimulants ...?” Another Federal government agency reported that Applicant used marijuana on several occasions from 2003 to 2007, he sold marijuana from 2003 to 2005, and in 2003 he sold crack cocaine. In his SOR response, Applicant admitted that he intentionally falsified his drug history when he completed the 2010 SCA, but he also claimed that the illegal drug activity occurred during his teenage years only. He intentionally falsified the SCA after he was advised by unnamed individual(s) to never divulge his illegal drug use due to potential negative consequences while he was an enlisted member in the U.S. Navy. Applicant was subsequently granted a top secret DOD security clearance in 2010. (Tr. 25-29, 37)

At the hearing, Applicant denied ever using illegal drugs while he was an active member of the Navy. He admitted that he sold marijuana in high school, for a combined total amount of less than \$1,000. He also noted that some of the details he provided during his polygraph to another government agency was due to being under stress, and trying to divulge as much information as possible to pass the polygraph test. He provided “clarification” to the timeframe and his involvement with illegal drugs, in an effort to appease the polygrapher. (Tr. 25-29, 37)

During questioning by Department Counsel, Applicant admitted that he stole three 30-gallon bags full of marijuana from a farmer who employed him during his high school years. He and a couple of his friends sold some of that marijuana for approximately two or three thousand dollars. Applicant told the polygrapher that he used illegal drugs while he was an enlisted member of the U.S. military, and his last use of illegal drugs occurred in 2007. At the hearing, Applicant claimed that he was mistaken about the dates. He only used and sold illegal drugs during the years he attended high school, and he stopped all illegal drug activity upon his graduation from high school in 2004. Applicant testified that after he reported to the polygrapher that he last used marijuana in 2007 while a member of the U.S. military, he was able to pass that particular portion of the polygraph exam. At the hearing, Applicant admitted he made those statements to the polygrapher, but claimed they were inaccurate. When questioned by Department Counsel if he had ever traded marijuana for prescription medication, Applicant initially denied doing so, but then recanted and said he did trade marijuana for prescription medications when he was about 14 years old. He also denied selling crack cocaine and stated he would have traded crack cocaine for something else, but then admitted he had received money for crack cocaine, most likely \$10 or \$20. (Tr. 29-33, 35-37; GE 3)

SOR ¶ 1.c alleges that Applicant falsified information on his May 2005 SCA when he answered “No” to the following questions: “Section 27 – Your Use of Illegal Drugs and Drug Activity Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine ...?” and “Section 29 – Your Use of Illegal Drugs and Drug Activity In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your intended profit or that of another?” Applicant admitted he also intentionally falsified his 2005 SCA because he was worried that his past history with illegal drugs would prevent him being accepted in the U.S. Navy. He testified that his intentional falsification of the 2010 and 2005 SCAs did not show a pattern of deception, which occurred due to unique circumstances, bad advice from others, and his immature age. (Tr. 37-41)

Paragraph 2 of the SOR cited financial considerations security concerns. SOR ¶ 2.a alleges that Applicant is delinquent on a mortgage account in the amount of \$24,761. Applicant admitted this debt and discussed how he suffered financially after he was no longer permitted to work at the Federal government agency when he was denied SCI access. In 2015, his income dropped from \$140,000 to \$90,000, and he had a difficult couple of years managing his bills. He recently has been able to manage his debts now that his income is approximately \$132,000. Applicant claimed that his mortgage account was current. Department Counsel requested he send in documentation to support his claim. Applicant sent documentation in December 2019 which showed that his loan modification was approved, and in November 2019, he paid nominal late fees in the amount of \$103. (Tr. 41-44; AE C)

SOR ¶ 2.b alleges that Applicant is delinquent on a student loan in the amount of \$677, with a loan balance of \$13,304. Applicant provided documentation showing that his student loan was placed in forbearance status from September 2019 through December 2019. In March 2019 he started his master’s degree program. As long as he is enrolled in school, he will not be required to pay on his student loan. According to the documentation Applicant provided, he is required to start making monthly payments of \$102 in January 2020. (Tr. 44-46; AE F)

SOR ¶ 2.c alleges that Applicant is delinquent on a furniture account that was charged off in the amount of \$5,065. Applicant admitted this debt, and claimed he was current with a payment plan he initiated with the creditor. Applicant provided documentation in December 2019 which showed he made four consecutive monthly payments of \$130 starting in August 2019. (Tr. 46-47; AE B)

SOR ¶ 2.d alleges that Applicant is delinquent in the amount of \$2,314 on a military credit card account referred for collection. This debt was incurred while he was a member of the Navy. Applicant provided documentation that his collection account of \$2,511 was paid in full just before the hearing. (Tr. 47-48; AE E)

SOR ¶ 2.e alleges that Applicant is delinquent for an iPad loan account charged off in the amount of \$1,724. Applicant admitted this debt but claimed that he was current with a payment plan with the creditor. Applicant provided documentation in December 2019 which showed he made four consecutive monthly payments of \$132 since August 2019. (Tr. 48; AE A)

SOR ¶ 2.f alleges that Applicant is delinquent to an insurance provider in the amount of \$236. Applicant admitted this debt but claimed that the account was currently paid in full. He provided documentation which showed he settled this account for \$188 in June 2019. (Tr. 48; AE D)

SOR ¶ 2.g alleges that Applicant is delinquent on a medical account for \$100. Applicant admitted this debt. In July 2019, this account was paid in full. (Tr. 49-50)

SOR ¶ 2.h alleges that Applicant is delinquent for a gym membership account in the amount of \$153. Applicant admitted this debt and stated this debt was currently paid in full. Documentation he provided showed this debt was paid in October 2018. (Tr. 50; SOR Response; AE G)

SOR ¶ 2.i alleges that Applicant is delinquent to a state university in the amount of \$911. Applicant admitted this debt was for a returned tuition payment from the Department of Veterans Affairs after he failed an undergraduate class. Applicant claimed he paid this debt. Department Counsel requested verifying documentation since July 2019 documentation showed a previous balance of \$1,824 had been reduced to an outstanding balance of \$912. Applicant did not provide supporting documentation by the time the record closed. There is insufficient evidence to show that this debt has been resolved. (Tr. 50-52)

Applicant admitted he “paused” making retirement contributions in August 2019 in an effort to use the extra money to pay off his debts. Since 2015, he has been paying a monthly percentage of his income into his retirement account. He also admitted he had received financial counseling when he was a member of the military. (Tr. 56-57, 61)

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as

the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 provide truthful and candid answers during national security investigative or adjudicative processes. ...

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following are potentially applicable under the established facts in this case:

(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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official,... in making a recommendation relevant to a national security eligibility determination.

The SOR alleges Applicant deliberately falsified relevant and material information on his SCAs he completed in 2005, 2010, and 2015. Applicant admitted he intentionally falsified two of the three SCAs. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(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 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 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.

None of the mitigating conditions apply. Applicant admitted he deliberately falsified the SCAs he completed in 2005 and 2010. He intentionally failed to disclose the

circumstances of his significant illegal drug history. His 2005 falsification enabled him to become a member of the U.S. Navy, and in 2010, it resulted in him being granted a top secret DOD security clearance. Applicant denied intentionally falsifying his 2015 SCA about whether his security clearance eligibility or access had been denied. He claimed he thought only his VAR was denied due to failing a polygraph on three separate occasions. In 2015, Applicant provided details of his illegal drug history to a polygrapher, but he was unable to pass the polygraph tests. Applicant was walked out of the Federal government agency building, and his income was reduced significantly after he was unable to perform specific job duties that required SCI access.

During the hearing, Applicant provided inconsistent and self-serving statements concerning his illegal drug history that he previously reported in 2015 to a polygrapher. His claim that he did not intentionally falsify his 2015 SCA regarding whether his security clearance eligibility/access had been denied is also not credible. He was a U.S. military member for eight years, and he has been a government contractor since 2015. He has held a top secret security clearance since 2010. With this background, Applicant was certainly aware in 2015 that he needed SCI eligibility/access to work for a Federal government agency. He is not a first-time applicant for a DOD security clearance, and his claim of ignorance about the investigative process for attaining his SCI access is unconvincing. Overall, I find Applicant demonstrates a pattern of dishonesty, which casts doubt on his reliability, trustworthiness, and overall good judgment. Personal conduct security concerns are not mitigated.

## **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. . . . 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 two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." 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 conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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 SOR alleges nine delinquent debts totaling \$35,941. Applicant's debts resulted from his significant salary cut in 2015 and the resulting lack of income. Whether this is a circumstance largely beyond his control is questionable.

Applicant has either paid, settled, or is currently paying eight SOR debts in ¶¶ 2.a through 2.h. The only SOR debt that remains unresolved due to insufficient evidence is the debt for \$911 in ¶ 2.i.

Applicant made sufficient progress resolving his delinquent debts. In December 2019, he provided sufficient documentation of numerous paid or current accounts. He received financial counseling, and he has made enough progress resolving his delinquent debts to show his good faith efforts to resolve his delinquent debts. There are clear indications that his financial problem is being resolved, and his finances are under control. Future financial problems are unlikely to occur. AG ¶¶ 20(c) and 20(d) are established, and financial considerations security concerns are mitigated.

### **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), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. This SOR highlights serious offenses that provides insight to a person's character and integrity. Although he has mitigated the security concerns under Guideline F, under Guideline E, Applicant's explanations are self-serving and incredible. I conclude that Applicant has not mitigated security concerns raised by his personal conduct. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

### **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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a-2.i:	For Applicant

### **Conclusion**

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

Pamela C. Benson  
Administrative Judge