



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



In the matter of: )  
)  
) ISCR Case No. 19-01548  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Appellant: *Pro se*

March 10, 2020  
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**Decision**  
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GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines F (financial considerations) and J (criminal conduct). Applicant incurred a number of financial obligations that he failed to pay in a timely manner. He also failed to complete the requirements of a court’s sentence for an alcohol-related driving offense and is the subject on an outstanding arrest warrant. Based upon the record as a whole, Applicant’s evidence was insufficient to mitigate the security concerns raised by his financial and criminal conduct. National security eligibility for access to classified information is denied.

**Statement of the Case**

On October 26, 2017, Applicant submitted a security clearance application (SCA). On June 7, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) setting forth allegations under Guidelines F and J and concluding that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry*

(Feb. 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective for all adjudicative decisions on or after June 8, 2017.

On July 9, 2019, Applicant answered the SOR and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). He provided a supplemental "Addendum" to his SOR answer on September 30, 2019. On December 2, 2019, the case was assigned to me. On the same day, DOHA issued a notice of hearing scheduling the hearing on January 7, 2020.

I convened the hearing as scheduled. Department Counsel presented ten proposed exhibits, which she marked as Government Exhibits (GE) 1 through 10. Applicant had attached two exhibits to his original SOR answer, which I marked as Applicant's Exhibits (AE) A and B. At the hearing, he presented three additional proposed exhibits, which I marked as AE C through E. I have marked Department Counsel's Exhibit List as Hearing Exhibit I. The exhibits of both parties were admitted without objection. Applicant testified on his own behalf. DOHA received the hearing transcript (Tr.) on January 21, 2020.

### **Findings of Fact**

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact:

Applicant, 33, has worked as a tech specialist for a defense contractor since September 2017. He graduated from high school in June 2004 and enlisted in the U.S. Marine Corps in September 2005. He served for nine years and held the rank of sergeant (E-5) at the time of his honorable discharge. He has never deployed to a war zone. He held a security clearance while in the Marine Corps.

Applicant has been unemployed or under employed from the time of his September 2014 discharge until his current employment in 2017. From October 2014 through February 2016, he was a full-time college student and was receiving a stipend under the Post-9/11 GI Bill. He supplemented his income working as a bouncer in bars. He has not earned a college degree. He has never married, and he has no children. (Tr. at 24-30.)

Applicant was indebted when he was discharged from the Marine Corps. Thereafter, his finances worsened without a regular paycheck equal to what he was making in the military until he began his current employment. He incurred a number of additional debts that he has been unable to pay. (Tr. 31-32.)

## **GUIDELINE F, Financial Considerations**

**SOR ¶¶ 1.a, 1.i, and 1.j, Three Bank Accounts Charged-Off in the Total Amount of \$12,097** – The debt alleged in SOR ¶ 1.a (\$9,802) is for a loan used to purchase a vehicle. Applicant opened the loan in October 2016. He subsequently defaulted on the loan, and the vehicle was repossessed. After the resale of the vehicle, Applicant was responsible for the remaining balance. At one time, the creditor offered to settle the debt for about \$1,400, but Applicant was unable to make any payments. This debt is not resolved. (GE 2 at 6; GE 3 at 2; GE 4 at 1; GE 5 at 14; Tr. at 34-36.)

The debts owed to the same creditor alleged in SOR ¶¶ 1.i (\$1,143) and 1.j (\$1,152) are for an unpaid credit card and an overdrawn bank account. He wrote in his SOR answer that he had reached an agreement with the bank to settle these debts with partial payments if made by July 19, 2019. He credibly testified that he paid these settlements on time. He offered an exhibit, dated July 19, 2019, to show a payment of the two debts, which are listed on the exhibit. These debts are resolved. (SOR answer addendum; AE C; Tr. at 49-53.)

**SOR ¶¶ 1.b and 1.f, Two Education Loans Placed for Collection in the Total Amount of \$7,853.** The debt alleged in SOR ¶ 1.b (\$6,937) is for a student loan for a course that Applicant failed and was obligated to repay at that time. The education debt alleged in SOR ¶ 1.f (\$916) is also owed to the same lender. Applicant has not been able to pay these obligations. These debts are not resolved. (SOR answer at 2; GE 2 at 6-7; GE 3 at 2; Tr. at 36-40.)

**SOR ¶ 1.c, Credit Account Placed for Collection in the Amount of \$4,419.** This debt is for an unpaid military credit card. Applicant defaulted on this debt in July 2016. A federal lien has been levied against him. Payments have been made to the U.S. Government through the diversion of his federal tax refunds. Applicant has voluntarily made some minor payments on this account, but he has not established a repayment plan. This debt is not resolved. (GE 2 at 7-8; GE 3 at 2; GE 4 at 2; GE 5 at 5; Tr. at 40-41.)

**SOR ¶ 1.d, Unpaid Education Account in the Amount of \$3,744.** In May 2016, Applicant opened this student loan with a second education lender. The loan is presently with a collection agency acting on behalf of the Federal Government. He defaulted on the loan in December 2018. Applicant attached to his SOR answer a copy of a receipt reflecting a June 2019 payment on this account in the amount of \$150. Applicant testified that he is “still paying on it regularly.” He tries to pay \$50 or \$100 on this account every pay period “as I can.” He asserted that for the last eight months, he has been making payments at least once a month, but this is uncorroborated. A November 25, 2019 credit report reflects a balance on this account of \$3,685, just \$59 less than the original debt amount. Applicant is trying to pay down this debt, but has not established a payment plan with the bank and has not provided documentary evidence of an appropriate track record of payments. This debt is not resolved. (SOR answer at 2; GE 3 at 2; AE A; Tr. at 41-43.)

**SOR ¶ 1.e, Unpaid Rent in the Amount of \$2,550.** This debt is for unpaid rent Applicant owes to his former landlord. After his September 2014 discharge, when he was no longer receiving his basic housing allowance, he fell behind on his rent and was evicted in June 2015. The creditor will not work with Applicant to accept a partial payment in settlement of this debt. He has not made any payments on this account. This debt is not resolved. (SOR answer; GE 2 at 2, 7; GE 4 at 2; Tr. at 44-45.)

**SOR ¶¶ 1.g and 1.h, Unpaid Communication Accounts Placed for Collection in the Total Amount of \$615.** Applicant testified that he has paid the debt alleged in SOR ¶ 1.g (\$516) in the last couple of years while he was working for his current employer. He points out that the debt does not appear on his current credit report that he reviewed prior to the hearing. The debt does not appear on the Government's two most recent credit reports. The debt is listed in GE 5, which is dated December 16, 2017. Applicant testified that he needs to investigate further to establish that this debt is paid. He also believes he has paid the debt alleged in SOR ¶ 1.h (\$99), but he has no record of the payment. As with the debt alleged in SOR ¶ 1.g, the smaller debt only appears on the oldest credit report in the record. The fact that debts are no longer listed on recent credit reports, however, is not reliable evidence of payment of a debts. Debts are often removed from credit reports for reasons other than payments. Applicant has not established that these debts have been paid. These debts are not resolved. (GE 3; GE 4; GE 5 at 4; Tr. at 45-49.)

**SOR ¶ 1.k, Unpaid Court Costs and Fine in Amount of \$161.** Applicant testified that he first learned about the debt when he received the SOR. He believes this debt is for a fee related to a substance abuse program he entered as part of the disposition of a Driving While Intoxicated (DWI) charge discussed below. He claims he was advised that he can only pay this small debt if he pays his defense attorney \$2,000 to resolve it for him. He claims that the state will not accept a check from him directly because he had counsel in his criminal case. Actually, the record evidence reflects that this debt is for a ticket he received on February 13, 2017, for operating an unlicensed motor vehicle. He did not appear on the April 12, 2017 trial date and was found guilty *in absentia*. He was fined \$50 and ordered to pay costs of \$101, for a total debt of \$151. The \$10 discrepancy with the debt amount in the SOR allegation appears to be a typographical error. This debt is not resolved. (SOR answer at 3-4; GE 6; Tr. at 53-55.)

Applicant wants to resolve his largest debts first. He has no savings and no ability to pay the unresolved debts. His take-home pay appears to be more than sufficient to cover his basic living expenses. His rent is very modest. He owns no motor vehicles, except a motorcycle. He cannot explain where he spends all of his income. (Tr. at 56-74.)

Two other incidents have impacted Applicant's finances. Recently, Applicant was involved in an incident with another person and a torts claim was made against him for causing emotional distress. He settled the claim and made some payments to the other party. In March 2018, Applicant was involved in a serious accident while riding his motorcycle. He was badly injured and needed surgery. He lost work for an extended period of time, though he eventually received disability pay. He also received a settlement in the gross amount of about \$30,000. He used those funds to pay off the loan on his

motorcycle and to pay his attorney. After that settlement, he did not seek financial counseling to help him return to financial stability. (SOR answer at 4; AE B; Tr. at 56-74.)

## **Guideline J, Criminal Conduct**

### **SOR ¶¶2.a and 2.b, June 2016 DWI, 1<sup>st</sup> Offense Conviction and Warrant for Failure to attend Court-Ordered Alcohol Abuse Classes.**

Applicant admits the allegations in SOR ¶ 2.a that in June 2016, he was convicted of DWI 1<sup>st</sup> and sentenced in October 2016 to serve five days in jail. The record evidence reflects that the charge he pled guilty to involved a blood alcohol content, or BAC, of 0.15% to 0.20%. He was also sentenced to 12 months of unsupervised probation and his driver's license was restricted for limited use until October 2017. In addition, the court ordered Applicant to attend a state alcohol substance abuse program (Program). He mistakenly believed that he had fulfilled all of the requirements of that Program in State 1 before he moved to State 2 to begin his employment with his current employer in September 2017. On July 10, 2017, a charge was filed against him in State 1 for non-compliance with the Program. On August 10, 2017, he was tried *in absentia* in State 1 court and found guilty. The court issued a *capias* for his arrest. Applicant has been declared to be a fugitive by State 1. (GE 6 at 1-2; GE 7 at 5; GE 8 at 1-2; GE 9 at 1.) As of the date of the hearing, the warrant remained outstanding.

## **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 as follows:

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.

Applicant's admissions in his SOR response, his testimony, and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline for the eleven SOR allegations: AG ¶¶ 19(a) ("inability to satisfy debts") and (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.

None of the above mitigating conditions have been established. Applicant's behavior has been recent, frequent, and was not under any circumstances that were so unusual as to make it unlikely to recur. Applicant did experience a period of unemployment and underemployment that was beyond his control. He had difficulty transitioning from his life in the Marine Corps to civilian life from an employment standpoint. Also, his March 2018 accident created additional difficulties. The record evidence, however, does not show that he acted responsibly under the circumstances. He has not sought financial counseling. His plan to pay his large debts first is a non-starter since he has no savings and does not appear to have the ability to control his spending and save money, even though he earns a good income. Since starting his current job in September 2017, he has not been able to make even regular small payments on his

debts. He has not initiated a good-faith effort to repay or resolve his debts with only two exceptions (SOR ¶¶ 1.i and 1.j). He claims he has paid two other small debts (SOR ¶¶ 1.g and 1.h), but he is unable to provide evidence of any payments. He does not dispute any of the remaining SOR debts. Overall, his actions cast doubt on his current reliability, trustworthiness, and good judgment.

### **Guideline J, Criminal Conduct**

The security concern under this guideline is set out in AG ¶ 30 as follows:

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.

The following disqualifying conditions are potentially applicable:

AG ¶ 31(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;

AG ¶ 31(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; and

AG ¶ 31(d): violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant was convicted of DWI 1<sup>st</sup> (BAC 0.15% to 0.20%) in June 2016. He failed to satisfy the terms and conditions of the court-ordered Program for alcohol abuse. In July 2016, he was charged with non-compliance. There is an outstanding warrant for his arrest that he has not addressed since learning about it when he received the June 2019 SOR. All of the above disqualifying conditions apply.

The following mitigating conditions are potentially applicable:

AG ¶ 32(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

AG ¶ 32(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.



Neither of the above mitigating conditions apply. The DWI conviction occurred a number of years ago, but Applicant failed to comply with the terms of his sentence. The court subsequently issued a *capias* for his arrest, which remains outstanding. Applicant's inactions suggest that similar behavior could recur in the future and cast doubts about his reliability, trustworthiness, and good judgment. Applicant has attempted to improve himself by pursuing a college education. He eventually found a good job and has kept his employment for over two years. That evidence, however, is insufficient. His noncompliance with the terms of his DWI sentence and his unresolved arrest warrant are serious issues. It should be obvious, but it is nonetheless stated here, that any applicant with an outstanding arrest warrant is not a good candidate for a security clearance. Under these circumstances, it is impossible to conclude that he has experienced a successful rehabilitation.

### **Whole-Person Analysis**

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, and applying the adjudicative factors in AG ¶ 2(d), specifically: (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 J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. Applicant experienced a difficult transition from being a Marine sergeant to a civilian. He was unable to complete his college degree requirements and experienced a long period of unemployment and underemployment. He was fortunate to find a good-paying job and to begin to get his life back on track, but even then he has not been completely successful. He has not sought professional help with his finances. Applicant has a strong character and sincerely wants to do the right thing, but he seems somewhat at a loss as to how to resolve his problems and to regain a solid footing after his years of honorable military service.

Applicant's evidence in mitigation is insufficient to address the security concerns raised by the SOR allegations and his admissions thereto. After weighing the disqualifying and mitigating conditions under Guidelines F and J and evaluating all of the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial delinquencies and criminal conduct.

### **Formal Findings**

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|---|-------------------|
| 1. Guideline F, Financial Considerations: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.h:            | Against Applicant |
| Subparagraphs 1.i and 1.j:                | For Applicant     |
| Subparagraph 1.k:                         | Against Applicant |
| 2. Guideline J, Criminal Conduct:         | AGAINST APPLICANT |
| Subparagraphs 2.a and 2.b:                | Against Applicant |

### **Conclusion**

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

John Bayard Glendon  
Administrative Judge