



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 20-01374
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/10/2021

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines D (Sexual Behavior), E (Personal Conduct), and F (Financial Considerations). The concerns under Guideline D are mitigated, but the concerns under Guidelines E and F are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 5, 2019. On October 16, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines D, E, and F. 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 in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 28, 2020, and the case was assigned to me on December 14, 2020. On December 18, 2020, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 7, 2021. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified, but did not present the testimony of any other witnesses.

In Applicant's answer to the SOR, he submitted a copy of his request to set aside nonjudicial punishment, a copy of the favorable decision of an administrative separation board, and five character statements that were presented at the administrative separation board. His answer to the SOR and its enclosures were marked as Answer 1 through 22 and admitted in evidence. He did not submit any additional documentary evidence at the hearing. I kept the record open to enable him to submit additional documentary evidence. He timely submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. DOHA received the transcript (Tr.) on January 27, 2021.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.c, 1.e, 2.c-2.e, 3.b, 3.e, 3.f, and 3.i-3.k. He denied the allegations in SOR 1.d, 2.b, 3.c, 3.d, 3.g, 3.h, and 3.i-3.q. He did not expressly admit or deny the allegations in SOR ¶ 2.a, which cross-alleges the allegations in SOR ¶¶ 1.a-1.i, and SOR ¶ 3.a, which cross-alleges the allegation in SOR ¶ 2.b. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 36-year-old able-bodied seaman employed by a defense contractor since October 2019. He served on active duty in the U.S. Navy from June 2002 to June 2015. He was ineligible to reenlist under the Navy high-year tenure rules due to his reduction in rate from culinary specialist second class (pay grade E-5) to culinary specialist third class (pay grade E-4), imposed as nonjudicial punishment in January 2014. He received an honorable discharge. During his Navy service, he was awarded the Good Conduct Medal, the Navy-Marine Corps Achievement Medal (four awards), and various service medals and qualification badges. He held a security clearance while in the Navy. (Tr. 8.)

Applicant worked as an able-bodied seaman for a non-government employer from June to December 2016, when he quit this job for what he considered a better career opportunity. He worked as a railroad conductor from January 2017 until he was hired by his current employer. (GX 1 at 17-18.) He is still employed, but he has been in a no-pay status since October 2020, when the SOR was issued. He was earning about \$49,000 per year before he was placed in a no-pay status. (Tr. 27.)

Applicant attended a maritime academy from February to June 2014 and received a certificate. He attended a university from February 2017 to June 2019 and received an associate's degree in advanced culinary arts.

Applicant married in September 2007 and divorced in May 2015. He married his current spouse in August 2017. He has two children from his first marriage, ages 16 and 12, and two stepchildren, ages 22 and 21.

In June or July 2012, Applicant was accused by a female sailor of kissing her three times against her will. When Applicant was questioned by an investigator from the Naval Criminal Investigative Service (NCIS), he admitted kissing her once on her hand. (GX 3 at 14.) Applicant's commanding officer issued a military protective order prohibiting the female sailor and Applicant from having any contact, and Applicant was transferred to a new duty station aboard the ship. In Applicant's response to the SOR he admitted the allegation and said that he and the female sailor were dating at the time.

In July 2013, Applicant was issued another military protective order after another female sailor alleged that he had made inappropriate sexual advances. He and this female sailor had previously engaged in 'rough' sexual intercourse aboard the ship, in which he choked her, believing that she enjoyed it. In October 2013, this female sailor accused Applicant of touching her inappropriately while she was standing watch at night aboard their ship. When Applicant was interviewed by the NCIS, he told an investigator that the sailor had placed his hand on her breast and had put his hands on her neck because she enjoys being choked while having sex. (GX 3 at 5-6, 9-11.)

At the hearing, Applicant testified that he and the female sailor had a conversation while she was on duty on the flight deck at night, while the protective order was still in effect. She began groping him, and he groped her in return, and they began kissing each other. He denied trying to force her to perform fellatio on him, as she later claimed. (Tr. 39-41.) He admitted violating the military protective order to stay away from the female sailor. (Tr. 60.) During the NCIS investigation, the female sailor told investigators that she did not feel harassed by Applicant, that she was pressured to make a statement against him, and that she would not participate in non-judicial proceedings against him. (GX 3 at 15.)

In January 2014, Applicant received nonjudicial punishment from the captain of his ship for abusive sexual contact and assault on the female sailor. Applicant's punishment was reduction in rate from culinary specialist second class (pay grade E-5) to culinary specialist third class (pay grade E-4) and forfeiture of half of his pay per month for two months. (Answer at 6-7.)

During the NCIS investigation of Applicant's sexual conduct in July 2013, three other female sailors reported that he had sexually harassed them by repeated sexual comments and attempting to kiss them. One sailor told an investigator that Applicant repeatedly told her she was "hot." A second female sailor told an investigator that Applicant repeatedly tried to kiss her hand or forehead. A third female sailor told an investigator that Applicant told her, "You don't know what I would do to you." (GX 3 at 15.) At the hearing, Applicant testified that he sometimes complimented the female sailors on their appearance, but that he made no derogatory or inappropriate comments. (Tr. 51-54.) He admitted telling female sailors that "they looked good and they were hot." (Tr. 56.)

In late 2013 or early 2014, Applicant was transferred from the ship to shore duty because his superiors believed his conduct created a hostile work environment. (GX 3 at 11.) He was issued another military protective order in April 2014. (GX 3 at 15.)

On May 1, 2014, Applicant appeared before an administrative separation board, and the board unanimously found that the evidence did not support the allegations against him. A document submitted by Applicant reflects that the board was convened to consider allegations of “Misconduct—Commission of a Serious Offense,” but it does not reflect the specific acts of misconduct considered by the board. (Answer at 9.)

On May 2, 2014, Applicant requested that his commander set aside the nonjudicial punishment. (Answer at 6-8.) The record does not reflect the response, if any, to his request. He was discharged on May 5, 2014, at the end of his enlistment, and received an honorable discharge. (GX 2 at 4.) Because of his reduction in rate, he was ineligible to reenlist.

When Applicant submitted his SCA, he answered “No” to a question whether he had been “subject to court-martial or other disciplinary procedure under the Uniform Code of Military Justice (UCMJ) such as Article 15, Captain’s mast, Article 135 Court of inquiry, etc.” He did not disclose the nonjudicial punishment that resulted in his reduction in rate. During a personal subject interview (PSI) in January 2020, he told an investigator that he was not subject to court-martial or other disciplinary actions while on active duty. He later admitted to the investigator that he was charged with an offense under the UCMJ but that he was acquitted, which is why he did not disclose it in his SCA. (GX 2 at 9-10.) At the hearing, he admitted that he should have disclosed his nonjudicial punishment in the SCA, but he “wasn’t thinking.” (Tr. 72.) His failures to disclose his nonjudicial punishment in the SCA or during the PSI were not alleged in the SOR.

After Applicant was discharged from the Navy, he was a probationary employee of another federal agency from May 2015 to August 2016. He worked a 30-day schedule, with 30-day intervals of unemployment, during which he received unemployment benefits. His annual pay from this federal agency was about \$50,000 per year.

In Applicant’s SCA, he stated that he was laid off from this position with another federal agency. He answered “No” to a question whether he had been fired, quit after being told he would be fired, left by mutual agreement following charges or allegations of misconduct, or left my mutual agreement following notice of unsatisfactory performance. (GX 1 at 19.) During the January 2020 PSI, he told a security investigator that he did not believe he was fired. (GX 2 at 8.) However, in his answer to the SOR, he admitted that he was terminated for misuse of the government credit card and “failure to pay obligations.”

In the same SCA, Applicant answered “No” to a question whether, in the last seven years, he had been counseled, warned, or disciplined for violating the terms of agreement for a travel or credit card provided by his employer. (GX 1 at 43.) During the PSI, he told the investigator that he answered “No” to this question because he did not receive any

written or oral reprimands and was not suspended. (GX 2 at 8.) In his answer to the SOR, he stated that he did not knowingly misuse the credit card. (Answer at 2.) At the hearing, he testified that his personal credit cards had been stolen, he did not have any cash, and he used the government credit card for food and materials that he needed for his work, such as foul weather gear, while he was on temporary duty away from his home and primary duty station. (Tr. 82-85.) He testified that he did not promptly pay off the charges on the credit-card account because he was sent on another temporary duty assignment. He made some payments on the account but never paid it in full. (Tr. 86.)

The SOR alleges 16 delinquent debts that are reflected in credit reports from December 2019, May 2020, and December 2020. (GX 4, 5, and 6.) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 3.b: payday loan account referred for collection of \$1,427. In the PSI, Applicant admitted this debt and stated that he was making payments on it. (GX 2 at 14.) The December 2020 credit report reflects that this debt became delinquent in May 2019 and is unpaid. (GX 6 at 2.) At the hearing, he testified that he had not made any payments on this debt. (Tr. 102.)

SOR ¶¶ 3.c and 3.d: delinquent medical bills for \$222 and \$70. In the PSI, Applicant admitted both of these debts, and stated that both bills should have been covered by his insurance. (GX 2 at 13.) In his answer to the SOR, he stated that the \$222 bill had been paid and that he was disputing the \$70 bill because it should have been covered by his insurance. He did not submit any documentation showing that the \$222 bill was paid. The May 2020 credit report reflects that the \$222 bill is unpaid. (GX 5 at 2.) The December 2020 credit report reflects that the \$70 bill has been paid. (GX 6 at 1-2.)

SOR ¶ 3.e: unsecured loan referred for collection of \$1,619. In the PSI, Applicant admitted this debt and stated that he was trying to settle it for less than the full amount. In his answer to the SOR, he stated that he was disputing it because it “was made for ex-wife.” The December 2020 credit report reflects that the debt is unpaid and disputed, with the comment, “consumer disputes after resolution.” (GX 6 at 2.) The debt is not resolved.

SOR ¶ 3.f: deficiency of \$6,131 after vehicle repossession In the PSI, Applicant stated that he voluntarily surrendered this vehicle after he lost his job with another federal agency and could not afford the payments. (GX 2 at 12.) In his answer to the SOR, Applicant stated that his ex-wife had possession of the vehicle and defaulted on the payments after she lost her job. The December 2020 credit report reflects that the last payment on this debt was in January 2015. (GX 6 at 4) Applicant testified that his divorce decree included his wife’s agreement to pay this debt. (Tr. 106.) After the hearing, he provided a copy of his divorce decree, which recites that he and his ex-wife had executed a property settlement that had been filed with the papers in the case. (AX E at 2.) However, Applicant did not include a copy the property settlement in his post-hearing submission. The debt is not resolved.

SOR ¶ 3.g: telecommunications account charged off for \$157. In the PSI, Applicant attributed this debt to identify theft and denied that it was his debt. (GX 2 at 12.) In his answer to the SOR, he stated that the debt was paid in full. The May 2020 credit report reflects that Applicant disputed the debt, it was charged off, and the account was closed. However, the credit report still reflects a past due amount of \$157. (GX 5 at 3.) The debt is not resolved.

SOR ¶ 3.h: unsecured loan referred for collection of \$1,219. In Applicant's answer to the SOR, he denied this debt, stating that it should have been removed from his credit report. The December 2020 credit report reflects that the debt became delinquent in July 2014, the collection account was opened in July 2019, and that Applicant disputed the debt. (GX 6 at 2.) The debt is not resolved.

SOR ¶ 3.i: deficiency after vehicle repossession charged off for \$19,059. In the PSI, Applicant explained that this vehicle was a total loss after an accident, but that the insurance company paid less than the amount owed. (GX 2 at 13.) He admitted this debt in his answer to the SOR, but stated that he was disputing the amount with the insurance company. At the hearing, he testified that the lender falsely represented that his contract included gap insurance. He was unable to produce documentation showing that his finance contract included gap insurance. The debt is not resolved.

SOR ¶ 3.j: unsecured loan charged off for \$1,620. Applicant admitted this debt in his answer to the SOR. The May 2020 and December 2020 credit reports reflect that the account was opened in December 2019, became delinquent in January 2020, and was charged off. (GX 5 at 4; GX 6 at 3.) Applicant testified that he contacted the creditor five days before the hearing and offered to pay \$75 every two weeks but had not received a response. (Tr. 113.) The debt is not resolved.

SOR ¶ 3.k: military credit-card account referred for collection of \$1,508. In the PSI, Applicant stated that he intended to make a settlement offer in June 2020. The May 2020 and December 2020 credit reports reflect that the account became delinquent in April 2016 and that no payments have been made. (GX 5 at 4; GX 6 at 3.) Applicant testified that he contacted the creditor in June 2020, and was he informed that it was not accepting settlements because of the COVID-19 virus, and that he should contact them again in June 2021. (Tr. 115-16.) The debt is not resolved.

SOR ¶ 3.l: child-support arrearage referred for collection of \$25,900. In Applicant's answer to the SOR, he stated that his ex-wife had waived the child-support requirement. The divorce decree, dated May 21, 2015, recites that there was no child-support arrearage as of that date. (AX E at 5.) The child-support arrearage is reflected in the December 2019 credit report. (GX 4 at 6.) The May 2020 and December 2020 credit reports reflect a paid collection account with a zero balance due. (GX 5 at 5; GX 6 at 3.) Department of Social Services records also reflect a zero balance. (AX A; AX C.) This debt is resolved.

SOR ¶ 3.m: collection account for \$142. This debt is reflected in the December 2019 credit report. (GX 4 at 6.) In the PSI, his response to the SOR, and at the hearing, Applicant stated that this debt was paid in full. (GX 2 at 14; Tr. 120.) He provided no documentation to support his statement. The debt is not resolved.

SOR ¶ 3.n: cellphone account referred for collection of \$589. This debt is reflected in the December 2019 credit report (GX 4 at 6.) In the PSI, Applicant stated that he has an account with this provider and that it is current. (GX 2 at 14.) He did not provide any documentation regarding the status of this account. It is not resolved.

SOR ¶ 3.o: utility bill referred for collection of \$441. This debt is reflected in the December 2019 credit report. (GX 4 at 6.) In the PSI, Applicant stated that this debt was paid in full. (GX 2 at 14.) He did not provide any documentation regarding the status of this account. It is not resolved.

SOR ¶ 3.p: damage to rental apartment referred for collection account of \$81. This debt is reflected in the December 2019 credit report. (GX 4 at 6.) In the PSI, Applicant admitted the debt, which was for repair of nail holes in the walls of a rental apartment, and he stated that he paid it. (GX 2 at 13.) After the hearing, he submitted documentary evidence that it was paid. (AX B; AX D.)

SOR ¶ 3.q: satellite television bill referred for collection of \$881. This debt is reflected in the December 2019 credit report (GX 4 at 7.) In the PSI, he stated that the debt was for equipment that was not returned, but that he had returned the equipment. (GX 2 at 13.) He did not provide any documentation showing the status of this debt. It is not resolved.

Applicant testified that he receiving financial counseling through the Department of Veterans Affairs a couple of years ago. (Tr. 125.) He also testified that he had hired a law firm to assist him in resolving his debts, but he terminated them because they were not helping him. He has now hired another firm. This firm helps him dispute questionable debts and to help him dispute some of the debts, negotiate settlements, and make payments. He pays the firm \$89 per month. (Tr. 100-02.)

When Applicant submitted his SCA, he answered “No” to all the questions financial delinquencies and did not disclose the delinquent debts alleged in SOR ¶¶ 3.b-3.q. In the PSI, he told an investigator that he did not disclose the delinquent debts because he did not know that they had been referred for collection and that he had paid some of them. (GX 2 at 11.) In his answer to the SOR, he admitted the falsification.

Applicant’s site manager for the past year submitted a letter attesting to his good character. He states that Applicant is an integral part of his team, with a great attitude, perseverance, and work ethic, and that they look forward to his return. (AX F.)

Applicant's answer to the SOR included five statements attesting to his good character. The same statements had been submitted to the administrative separation board in May 2014, and they all recommended that Applicant be retained in the Navy

Applicant's division officer from April 2011 to July 2012 described Applicant as a role model for subordinates and an exceptional enlisted leader capable of serving as a leading petty officer afloat. (Answer at 11-12.) A lieutenant junior grade who had known Applicant for three years described Applicant as a top-notch performer, courteous, respectful to superiors and subordinates alike, obedient, dependable, hard-working, and reliable. (Answer at 13-14.) A chief warrant officer three with 23 years of service had known Applicant for six years and described him as a great sailor who always performed above his pay grade, a leader who needs no supervision, always courteous and respectful, with a deep passion for the Navy and his sailors. (Answer at 15-16.) A chief petty officer who supervised Applicant for six months on shore duty described him as responsible, respectful, and reliable. (Answer at 17-18.) Another chief petty officer, who was the leading chief petty officer for the shore-based command to which Applicant was temporarily assigned, described him as reliable, trustworthy, mature, and dependable, to the extent that he was assigned to the unit's staff. (Answer at 19-21.)

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 D (Sexual Behavior)

The SOR alleges that around June and July 2012, Applicant kissed a female sailor, identified as OS3 three times against her will (SOR ¶ 1.a); that in July 2013, he was issued a military protective order to stay away from a female sailor, identified as BMSN, following allegations of inappropriate sexual advances and harassment (SOR ¶ 1.b); that in October 2013, he violated the military protective order by engaging in sexual contact with BMSM, and was issued another military protective order to stay away from BMSM (SOR ¶ 1.c); that in late 2013 to early 2014, he was transferred to a new duty station after three other female sailors, identified as CS3, CS2, and CS1, complained that he had sexually harassed them (SOR ¶ 1.d); and that in April 2014, he was issued another military protective order for abusive sexual contact in January 2014 and was processed for administrative separation (SOR ¶ 1.e).

The concern under this guideline is set out in AG 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. . . .

The evidence reflects that the military protective order alleged in SOR ¶ 1.e was for the conduct alleged in SOR ¶ 1.d, and the processing for administrative separation in alleged in SOR ¶ 1.e was based on the conduct alleged in SOR ¶¶ 1.a-1.d. As such, the allegations of military protective orders and the administrative separation duplicate the allegations of acts that were the basis for the orders and administrative separation. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005). Thus, I have resolved SOR ¶ 1.e in Applicant's favor.

The evidence supporting the allegations in SOR ¶¶ 1.a-1.d is sufficient to establish the disqualifying condition under this guideline in AG ¶ 13(a): "sexual behavior of a criminal nature, whether or not the individual has been prosecuted." The relevant mitigating conditions are:

AG ¶ 14(b): the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

AG ¶ 14(c): the behavior no longer serves as a basis for coercion, exploitation, or duress.

Both mitigating conditions are established. Applicant's abusive sexual behavior occurred more than seven years ago and has not recurred. He has had no contact with the sailors involved in his conduct since his discharge from the Navy. He has remarried, has two children, and is now focused on his family rather than casual sexual activity.

Guideline E, Personal Conduct

The SOR cross-alleges the sexual conduct alleged in SOR ¶¶ 1.a-1.e (SOR ¶ 2.a). It also alleges that Applicant was terminated from employment by another federal agency for misuse of a government credit card and failure to pay his obligations incurred with the credit card (SOR ¶ 2.b). The SOR further alleges that Applicant falsified his SCA in three particulars:

(1) By stating that he was laid off from his employment by another federal agency when in fact he was terminated for his misuse of a government credit card and failure to pay the obligation incurred with the credit card (SOR ¶ 2.c);

(2) By answering “No” to a question whether, in the last seven years, he had been counseled, warned, or disciplined for violating the terms of agreement for a travel or credit card provided by his employer, and failing to disclose that he was terminated by the other federal agency for misuse of a government credit card and failure to pay the obligation incurred with the credit card (SOR ¶ 1.d); and

(3) By answering “No” to questions whether, in the last seven years, he had been delinquent on alimony or child-support payments, defaulted on any type of loan, or had bills or debts turned over to a collection agency, and failing to disclose the debts and delinquencies alleged in SOR ¶¶ 3.b through 3.q (SOR ¶ 1.e).

The security 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. . . .

Applicant's false answers to questions in his SCA establish the following disqualifying condition under this guideline:

AG ¶16(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.

Applicant knew that he was terminated because of his misuse of a government credit card. While he may not have understood all the limitations on use of a government credit card, he also knew that he had not paid the credit-card charges incurred with the government credit card.

Applicant also knew that he had serious financial problems, including several vehicle repossessions and delinquent loans. His explanation that he did not know that the accounts had been referred for collection is implausible and unconvincing.

A security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions, based on complete and

accurate information, about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002).

Guideline F, Financial Considerations

The SOR cross-alleges the misuse of a government credit card alleged in SOR ¶ 2.b (SOR ¶ 3.a) and alleges 16 delinquent debts (SOR ¶¶ 3.b-3.3.q). 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).

The evidence establishes the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;
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 numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant's divorce and the car accident that resulted in the debt alleged in SOR ¶ 3.i were conditions largely beyond his control. However, his reduction in rate that resulted in his inability to continue his Navy career and his termination of employment by another federal agency were due to his misconduct and were not the result of conditions beyond his control. Furthermore, he has not acted responsibly. He has taken no action to resolve the delinquent payday loan alleged in SOR ¶ 3.b. Although he claimed that he had gap insurance on the vehicle involved in SOR ¶ 3.i, he provided no evidence of efforts to resolve the problem with the car dealer or the insurance company. He did not contact the creditor for the debt alleged in SOR ¶ 3.j until five days before the hearing. The credit-card account alleged in SOR ¶ 3.k became delinquent in April 2016, but he did not contact the creditor until June 2020. He claimed that the debts alleged in SOR ¶¶ 3.m, 3.n, 3.o, and 3.q were resolved, but he submitted no documentation to support his claim.

AG ¶ 20(c) is not established. Applicant testified that he had hired a debt-resolution agency and was paying it \$89 per month to dispute and resolve his delinquent debts. There is no evidence that the debt-resolution agency provides the type of counseling contemplated by this mitigating condition. Furthermore, he provided no documentation showing that it had made any progress in resolving his debts. The debt counseling he received from the Department of Veterans Affairs VA may qualify under this mitigating condition, but Applicant's financial situation is not under control.

AG ¶ 20(d) is established for the medical bill alleged in SOR ¶ 3.c and the child-support arrearage alleged in SOR ¶ 3.l. It is not established for the other delinquent debts alleged in the SOR.

