



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



In the matter of:)
)
) ISCR Case No. 20-02364
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

July 29, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns regarding personal conduct and drug involvement, but failed to mitigate concerns raised by financial considerations. Based upon a review of the pleadings, the documentary evidence, and Applicant's testimony, national security eligibility for access to classified information is denied.

Statement of the Case

On February 6, 2019, Applicant submitted a security clearance application (SCA). The Department of Defense, Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on January 6, 2021, detailing national security concerns under Guidelines F (Financial Considerations), E (Personal Conduct), and H (Drug Involvement and Substance Misuse). The DoD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); 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 within DoD on June 8, 2017.

On January 7, 2021, Applicant responded *pro se* to the SOR allegations (Answer). He submitted eight documents with his Answer. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). He retained counsel and his attorney submitted his Notice of Representation on March 31, 2021. On April 30, 2021, the case was assigned to me. DOHA issued a Notice of Hearing on May 28, 2021, scheduling the hearing for June 8, 2021, via DCS video teleconference.

I convened the hearing as scheduled. Department Counsel presented five proposed exhibits, marked as Government Exhibits (GE) 1 through 5. I marked Department Counsel's exhibit list as Hearing Exhibit I. In the absence of any objections, I admitted the Government's exhibits into the record.

At the hearing, Applicant's counsel offered 11 exhibits, marked as Applicant Exhibits (AE) A through K. In addition, he offered the eight documents Applicant attached to his Answer. I marked those Exhibits as AE L-1 through L-8. They were admitted into the record without objection. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on June 14, 2021.

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, including Applicant's responses in his Answer, his testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 28 years old. He married in May 2021, shortly before the hearing. He and his wife have no children. In May 2019, he earned a bachelor's degree, *summa cum laude*, with a GPA of 3.96 from a prestigious university. He paid for his college expenses by working part time in a coffee shop while attending classes on a full-time basis. He also had a \$10,000 student loan, which he paid off after his graduation. He received no financial support from his parents while attending college. After graduating from college, he began working for a DoD contractor in his "dream job" as an engineer and earns about \$89,000 per year. His wife works as a web and graphic designer, earning about \$52,000 per year. He and his wife are presently financially stable and are able to pay their current bills and save money every month. They have a net monthly remainder of about \$1,350. As of year-end 2020, he and his wife had about \$7,000 in savings, in addition to about \$36,000 in retirement accounts. They have increased their savings since then. Applicant's taxes are current, and he has received tax refunds. He has limited experience dealing with financial matters and in particular with credit and debts. At the time he submitted his Answer, he believed that he was no longer responsible for some old medical debts because they no longer appeared on his credit report. He has retained the services of a financial counselor to help him organize his finances by creating a budget and resolve his outstanding debts, which are the subject of paragraph 1 of the SOR. The counselor

initially advised Applicant that these debts date back to 2013 and are legally unenforceable. Nevertheless, Applicant now appreciates that he is still responsible for resolving these debts. (Tr. at 9-10, 12-14, 29, 31-32, 42; AE A; AE B at 8; AE K at 11.)

SOR ¶ 1, Guideline F, Financial Considerations

Applicant incurred five debts that were delinquent at the time of his Answer to the SOR. All of these debts are medical bills for the treatment of a 2013 sports injury Applicant experienced when he had no insurance. The total amount of the medical bills is about \$75,000. He sought assistance from his local hospital, but he was ineligible because he was over 18 and under 21 at the time he incurred the bills. He has recently applied for a financial-aid program with the medical center that treated him after his accident to assist him with these bills. It was not until Applicant obtained his current job that he had the financial resources available to begin paying these medical debts. He has paid one of the medical debts and plans to pay the remainder, either with the help of the financial-aid program or through payment plans to be developed. He has not yet made any additional payments, even on his three smallest debts. (Tr. at 12, 22-26 42-43; AE J.)

SOR Debts

In his Answer, Applicant denied all five debts alleged in the SOR. He wrote that he settled and paid one of the debts and none of the debts appear on his current credit reports. The details regarding each of the debts follow:

1.a Medical account in collection in the amount of \$71,801. This bill was incurred after his sports injury. This debt became delinquent in about 2013, and the creditor assigned it to a collection agency at that time. Applicant has not been able to pay it. **This debt is not resolved.** (GE 3 at 2; GE 4 at 2.)

1.b Medical account in collection in the amount of \$2,680. This debt is for anesthesia services that were rendered as part of his treatment for his 2013 injury. Applicant negotiated a settlement of this account for \$804. In March 2020, he paid this debt after receiving a settlement offer from the creditor in the mail. He provided a bank statement evidencing the payment. **This debt is resolved.** (Tr. at 14-15, 43; GE 3 at 4; GE 4 at 2; AE L-4 at 4.)

1.c Medical account in collection in the amount of \$281. This debt became delinquent in about 2013, and the creditor assigned it to a collection agency at that time. Applicant has made no payments on this debt. **This debt is not resolved.** (GE 3 at 3; GE 4 at 2.)

1.d Medical account in collection in the amount of \$281. This debt became delinquent in about 2013, and the creditor assigned it to a collection agency at that time. Applicant has made no payments on this debt. **This debt is not resolved.** (GE 3 at 3; GE 4 at 2.)

1.e Medical account in collection in the amount of \$202. This debt became delinquent in about 2014, and the creditor assigned it to a collection agency at that time. Applicant has made no payments on this debt. **This debt is not resolved.** (GE 3 at 3; GE 4 at 2.)

SOR ¶ 2, Guideline E, Personal Conduct

Paragraph 2 of the SOR alleges that Applicant intentionally omitted in his SCA the five debts listed in paragraph 1 of the SOR. In his Answer, Applicant denied that the omission was intentional. He wrote that he had no intention to provide a false response and was merely mistaken. He noted that he provided significant derogatory information in his SCA regarding his past drug use and two arrests in 2012. He also testified that at the time he prepared his SCA, he mistakenly thought he did not owe these medical debts because they did not appear on his credit report. During his March 2019 background interview, he also explained that at the time he prepared his SCA, he reviewed his credit report and none of the debts listed in the SOR appeared on his report. He testified at the hearing that he showed the credit report he used to the investigator. The five SOR debts were initially listed only by Experian, according to GE 3. One year later, they were listed in an Equifax credit report in the record, GE 4. Applicant referred to a different credit report at the time he prepared his SCA. That credit report used credit information from TransUnion and Equifax. He also explained to the investigator that he was unable to pay those medical bills at the time he was hospitalized because he no longer had insurance through his father's insurance due to his father's loss of his job. Applicant was unable to pay the bills in 2013 because he had minimum wage jobs at the time. (Tr. at 15-16, 25-26, 32-33; GE 2 at 4; GE 3 at 2-4; GE 4 at 2.)

SOR ¶ 3, Guideline H, Drug Involvement and Substance Abuse

Applicant provided information in his February 2019 SCA regarding his past use of marijuana. He disclosed that he began using marijuana in 2006 when he was about 14 years old. He wrote that over time, the frequency of his use declined. By the time he was a high school senior in 2010, he used marijuana infrequently. Most of his use of marijuana was when he was in high school. He used marijuana last in 2018 and then only two times that year. He wrote in his SCA that he does not intend to use marijuana in the future. At the hearing, he testified he has not used marijuana since 2018 and will not use it in the future. He no longer associates with the same persons he did when he used marijuana. He also provided a written statement regarding his intention not to use marijuana in the future (Tr. at 17-18, 21, 28, 30; GE 1 at 33; AE F.)

Character Evidence

Applicant presented five character letters at the hearing. His references describe him as trustworthy, honest, and committed to doing the right thing. He is also described as "an exemplary, focused and detailed driven engineer." He works hard, has high moral standards, and is a person of integrity. In the short period of time he has worked at his employer, he has been awarded a formal commendation for his high-quality work and

tireless efforts. His 2109 and 2020 performance reviews evidence describe Applicant's overall performance as excellent and successful. (AE C at 2; AE E at 1-5.)

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 testimony and the documentary evidence in the record establish the following disqualifying conditions under AG ¶ 19:

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

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Four of them have possible applicability to the facts of 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's medical debts arose in 2013 and were infrequent. They occurred under circumstances that are unlikely to recur. Applicant had a serious accident when he was about 20 years old. He had no medical insurance to pay for his treatment due to his father's loss of employment. He incurred one large medical bill and four smaller bills that he was not in a position to pay. His parents were unable or unwilling to help him with these bills. They have followed him into adulthood while he was working his way through college and into his first post-college job in 2019. Now that he has his own medical insurance, it is unlikely that he will experience delinquent medical bills in the future. He has incurred no other delinquent bills. Even though these eight-year-old debts are no longer enforceable and do not appear on his credit reports, Applicant has expressed his commitment to finding a way to pay them, either through a financial assistance plan or negotiated settlements with payment plans. Even though he has the current resources to pay the three smaller debts, he has not done so. Moreover, his efforts to establish a plan to pay his largest debt are very recent and only one payment has been made since he learned about the Government's concerns with his debts during his background interview. Under the circumstances, Applicant's debts cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is only partially established.

The conditions that gave rise to Applicant's five SOR debts were circumstances beyond his control. He experienced an accident that caused serious injuries requiring medical care. At age 20, the fact that he had no medical insurance to pay for his treatment was also a condition beyond his control. He has not acted responsibly, however, since beginning his employment with a defense contractor in 2019. He failed to develop a plan in a timely manner to pay his old medical debts. AG ¶ 20(b) is only partially established.

Applicant is receiving financial counseling. He recognizes that he is inexperienced in matters involving financial management and the proper handling of indebtedness. His advisor has helped him establish a realistic budget, and he has saved a significant amount of cash and retirement assets since his college graduation in 2019. He and his new wife earn a significant family income and have a healthy net monthly remainder every month. They are well-positioned to move forward with his counselor's advice to resolve his remaining debts. He has paid his second largest medical bill from his past, but he has

only recently taken any steps to develop a plan to resolve the remaining four debts. Without a longer track record of payments of the four remaining debts, AG ¶ 20(c) is only partially established.

Applicant has paid one of his four debts. He is only now beginning to initiate an effort to repay the four remaining debts. AG ¶ 20(d) is only partially established.

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 record evidence potentially establishes the following disqualifying condition under 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 failed to list in his 2019 SCA the five medical debts set forth in the SOR. The debts were incurred in 2013, which was within the relevant seven-year time frame of the question in Section 26 regarding debts referred to collection. The Government has the burden, however, to establish that Applicant's omission of the SOR debts in his SCA was intentional. Without substantial evidence of Applicant's intent to avoid disclosure of the derogatory information about his debts, the above-quoted disqualifying condition is not applicable. To establish its case, the Government relies primarily upon its evidence that Applicant was aware of the medical bills dating back to his 2013 hospitalization and he failed to disclose them in his SCA.

Applicant denied in his Answer and at the hearing that he intentionally omitted the information about his delinquent medical debts from his SCA. To support his denial, he points to the discussion in the written summary of his background interview in which he advised the investigator that he had checked his credit report when he prepared his SCA and saw that he had no debts reported as in collection. He was unsophisticated in financial matters and particularly about credit. He did not know that every credit bureau does not necessarily list all of his debts. He also did not believe that medical bills dating back to when he was 20 years old and had been unable to pay while in college in working minimum-wage jobs would be considered derogatory. These debts were not delinquent

due to overspending or failing to pay his credit cards. Lastly, he points out that he was fully transparent in disclosing on his SCA his history of using marijuana. He argued that he would not have voluntarily disclosed that information if he was trying to avoid disclosure of information that might negatively affect his eligibility for access to classified information.

The Government presented very limited evidence in support of its allegation of an intentional falsification by Applicant. Under the circumstances, the Government's evidence is insufficient to meet its burden of introducing substantial evidence on the issue of Applicant's intent.

If the Government's evidence is deemed sufficient to meet its burden of proof on the issue of Applicant's intent, the following mitigating condition set forth in AG ¶ 17(c) has possible applicability to the facts of this case:

(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.

The offense of falsifying information on a clearance application is not minor, but it did occur under unique circumstances and is unlikely to recur. Applicant credibly testified that he did not believe he was obligated to disclose debts that were not listed on the credit report he reviewed. He was unaware that information omitted from credit reports would be subject to disclosure under the circumstances of his medical debts. Applicant has learned from the experience of having his application for eligibility for a security clearance denied on a preliminary basis, having to hire an attorney to represent him at a DOHA hearing, and having to testify at the hearing. He now appreciates that the Government takes the omission of potentially derogatory information seriously in its clearance adjudications. It is unlikely that he would make the same misjudgment, intentional or otherwise, again. Moreover, the omission does not cast doubt on Applicant's overall reliability, trustworthiness, or good judgment.

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802.

Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant's admissions in his Answer and testimony and the documentary evidence in the record establish the following disqualifying condition under AG ¶ 25:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The guideline in AG ¶ 26 contains four conditions that could mitigate security concerns arising from drug involvement. Two of them have possible applicability to the facts of this case:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

Applicant has fully established both of the above mitigating conditions. His last use of marijuana was about three years ago, and at that time, his use was infrequent. His use while he was in high school was extensive, but as he matured, he reduced that use until he was a year away from graduating from college and preparing to work in a responsible position as an engineer. He has disassociated himself his drug-using friends. He also changed the environment where drugs were used by graduating from college, working in a professional environment, and marrying. He also provided a signed statement pursuant to AG ¶ 26(b)(3) of his intent to abstain from all drug involvement in the future. It is unlikely that Applicant will use illegal drugs in the future. His past use of marijuana does not cast doubt on his current reliability, trustworthiness, or good judgment.

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, E, and H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Additional comments are warranted. Applicant is an impressive young man who has grown and matured through his years as a full-time student while also working to pay for his education and living expenses. He now works in the adult world. He made a mistake by not listing his delinquent debts on his SCA, but there is insufficient evidence in the record that he did so intentionally to avoid disclosure to the Government. He also established that he has no intention of ever using marijuana again. He has not, however, taken sufficient steps at this point in time to demonstrate his willingness to pay his large medical debts, which date back to 2013. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has carried his burden to address the security concerns raised by his personal conduct and past illegal drug use, but he has failed to satisfy his burden to present sufficient evidence to mitigate concerns raised by financial considerations.

Formal Findings

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline H	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge