



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-02399
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel O'Reilley, Esq., Department Counsel  
For Applicant: *Pro se*

08/04/2021

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**Decision**

\_\_\_\_\_

Curry, Marc E., Administrative Judge:

Applicant's history of poor work performance, his federal income tax delinquency, and his multiple falsifications during the investigative process render him an unacceptable security risk. Clearance is denied.

**History of the Case**

On September 11, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

In an undated response, Applicant answered the SOR, admitting all of the allegations except subparagraphs 1(d), 1(f), 2(f), 2(i) through 2(m), 2(q), 2(r), and 2(u). He initially

requested a decision on the written record. On February 4, 2021, Applicant opted for a hearing instead of a decision on the written record, whereupon, the case was assigned to me on February 19, 2021. On April 22, 2021, the Defense Office of Hearings and Appeals issued a notice of hearing scheduling the case for May 14, 2021.

The hearing was held as scheduled. I received 15 Government exhibits (GE 1 – GE 15) and 8 exhibits from Applicant (AE 1 - AE 8), together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). At the end of the hearing, I left the record open, at Applicant's request, for him to submit additional exhibits. Within the time allotted, he submitted one additional exhibit, identified as AE 9. I incorporated Department Counsel's response into the record as GE 16. The transcript (Tr.) was received on June 2, 2021.

### **Findings of Fact**

Applicant is a 40-year-old married man. He graduated from college in 2003, earning a degree in criminal justice. He has been working as a background investigator since 2005, and has held a security clearance since 2010. (Tr. 14) He completed his most recent security clearance application in 2015, and failed to disclose any derogatory information. The background investigation revealed that Applicant experienced a series of financial problems and multiple work-related disciplinary actions. These issues as well as Applicant's failure to disclose them on his security clearance application form the basis of the SOR allegations.

### **Financial Concerns**

Applicant purchased a home in 2009. (GE 1 at 7) He was not particularly knowledgeable about financial management. (Tr. 18) Consequently, he fell behind on his mortgage payments. Ultimately, he began to fall behind on both consumer debts and federal income tax debts for tax years 2011 to 2013. (GE 5 at 2; GE 13 at 9) Subsequently, Applicant obtained a mortgage loan modification. As of July 2019, his mortgage payments were current. (GE 8)

The SOR alleged Applicant owes \$2,785 on four delinquent accounts. Applicant owes \$1,067 for the account alleged in SOR ¶ 1.a. In March 2021, he negotiated payment plan with the creditor and made the first payment on March 23, 2021. Applicant owes \$867 on a store credit card alleged in SOR ¶ 1.b. He paid the debt and the account has since been removed from his credit report. The SOR alleged in ¶ 1.c. that Applicant owed \$417 on a delinquent credit card. He satisfied this debt in March 2021. The SOR also alleges that Applicant owed \$434 on another store credit card account.

In addition to the consumer credit accounts, Applicant also owes \$15,288 in federal income taxes. He fell behind because he incorrectly filed his tax return as a 1099 contractor. (Tr. 24; GE 13 at 7) In July 2018, the IRS garnished Applicant's wages to collect this income tax delinquency, which is from tax years 2011 to 2013, as alleged in subparagraph 1.e. (GE 5 at 2; AE 9) After reaching a payment agreement with the IRS,

the Agency agreed to terminate the garnishment. (Tr. 24; AE 9) Applicant has been paying the delinquency through an installment agreement since then. (AE 9) The current balance of the Applicant's federal tax liability is unknown from the record. However, as of March 2021, Applicant was one month behind on payments. (AE 9)

### **Work Performance Issues**

Applicant has worked for federal contracting companies since 2005. Between 2008 and 2010, Applicant was employed by Company A, as a background investigator. In 2010, Applicant started a business doing security clearance background investigations. From 2010 to 2016, he worked as an independent contractor to Companies B, C, and D, on contracts with OPM and other federal agencies. Applicant closed his business in 2016 and went to work for Company E as a personnel security specialist from 2017 to 2018.

During the two years that Applicant worked with Company A, he, received four written warnings about his poor work performance. He signed one of the warnings in February 2009, certifying that he received it, and he prepared a response that was incorporated into his personnel file with the warning. (GE 3 at 6) Similarly, he signed a warning that he received in May 2009. (GE 3 at 6) In or around August 2010, he was fired from a company for unsatisfactory performance, as alleged in subparagraph 2.e. Applicant's multiple reprimands at Company A led to his dismissal in 2010.

After being dismissed from Company A in 2010, he began working with Company B as an independent contractor. (GE 6 at 1) He was fired in November 2011 "because of poor performance/timeliness/quality and communication issues," as alleged in subparagraph 2.f. (GE 6 at 1)

Applicant began working in an independent contractor status with Company C in 2011. In or around February 2012, Company C reprimanded Applicant for failing to protect personally identifiable information (PII) after leaving sensitive materials at a courthouse, as alleged in subparagraph 2.g. (GE 7 at 3; Tr. 38) In 2015, Company C suspended him and moved to terminate his contract for transmitting case reports without making requested revisions, failing to obtain and report issue information, neglecting to follow up on information supplied in case papers, failing to report items pertaining to subject re-contacts, and falsely reporting that he had contacted a subject when he had not, as alleged in subparagraph 2.p. (Answer at 5; GE 7 at 8) After Applicant's suspension, he failed to cooperate with efforts to retrieve his work materials, prompting his employer to contact the U.S. Office of Personnel Management's Integrity Assurance branch (OPM). (GE 7 at 8) Ultimately, Applicant's mishandling of his case load prompted OPM to conduct an audit of his cases. (Tr. 95)

Applicant began working with as an independent contractor with Company D in 2011. (GE 4 at 1). In or around 2014, Company D terminated Applicant's services, as alleged in subparagraph 2.h because the quality of his work was poor and not completed on time. (Answer at 4)

In 2017, Applicant began working for Company E as a personal security specialist. (Tr. 40; GE 5) Subparagraph 2.s alleges that Applicant's then-employer issued him a written warning for failing to comply with requests for information relating to income tax issues he was having at the time. The record contains evidence of e-mail between Applicant and his employer regarding a request for documentation. (GE 5 at 16) The e-mail correspondence does not specify the documentation sought, nor does it contain any warnings. Applicant's stint at this company was troubled. According to Company E's president, "the functions [Applicant was] asked to perform [were] very basic and that [he] still struggled[d] with them, both in terms of speed and accuracy." (GE 5 at 16) Ultimately, In November 2018, Applicant's employer dismissed him, as alleged in subparagraph 2.t.

Applicant began performing contract work for Company B again in August 2017. (GE 6 at 1) In May 2018, Company B terminated his contract for failing to complete required training. (GE 6 at 1) as alleged in subparagraph 2.r. (GE 12 at 5) There is no record evidence setting forth the reason for the termination.

### **Security Clearance Suspension**

The SOR alleges in SOR ¶ 1.f, that in 2006, Applicant's security clearance eligibility was suspended for failure to pay a phone bill timely.. (GE 1 at 32) The record contains no additional evidence about the circumstances surrounding the suspension.

### **2015 Security Clearance Application Omissions**

Applicant completed a security clearance application in 2015. (GE 1) He did not disclose the written warning, while working for Company C, for failing to protect PII that he received in February 2012 on his security clearance, as required. The SOR alleges that this omission constitutes a falsification, as alleged in subparagraph 2.i, and that subsequent failures to disclose this information during subject interviews in 2015 and 2020 constitute intentional omissions, as alleged in subparagraphs 2.n and 2.u, respectively. Applicant contends that these omissions were unintentional oversights. (Answer at 5)

Applicant failed to list on the 2015 security clearance application the company where he worked between 2010 and 2011. SOR subparagraph 2.j alleges that this omission constituted an intentional falsification. SOR subparagraphs 2.m and 2.u allege that Applicant's subsequent omission of this job during subject interviews in 2015 and 2020 constitute intentional omissions. Applicant contends that although he worked for this company in 2018, he did not work for it before completing the security clearance application, contrary to the SOR allegation. (Answer at 4) The facility security officer confirmed that Applicant worked at this company for two periods. The first period was before the completion of the security clearance application. (GE 6 at 1) Applicant's second stint with this employer in 2018 led to his termination for failing to complete training, as alleged in subparagraph 2.r. (GE 6 at 1)

In addition to alleging that Applicant intentionally omitted the job where he worked between 2010 and 2011, SOR subparagraph 2.j alleges that Applicant intentionally failed to disclose the company that fired him in 2014 on his 2015 security clearance application. Applicant contends in his answer that this omission was an unintentional oversight.

SOR subparagraphs 2.m and 2.o allege that Applicant did not disclose the jobs where he was terminated, respectively in 2011 and 2014, during successive subject interviews in 2015 and 2020. Applicant received copies of both subject interviews after completing them. He had the opportunity to review both investigator summaries, and make any additions. Applicant certified that he read both investigator summaries. (GE 14 at 4; GE 15 at 4) Neither report indicates that he disclosed these terminations.

Subparagraph 2.k alleges that Applicant, when completing the 2015 security clearance application, falsely characterized the reason for leaving the company where he was dismissed in 2010, as for career advancement, and subparagraph 2.l alleges that he failed to disclose the multiple disciplinary measures and written warnings that he received before his termination. During an investigative interview in 2015, he clarified the nature of his departure. (GE 13 at 4) Applicant also discussed at length his contentious relationship with management, how he disagreed with the disciplinary measures that they imposed, and how this contentious relationship led to his decision to file a wrongful termination claim after his dismissal. (GE 13 at 4) In Applicant's answer, he indicated that he did not recall being terminated from this company. (Answer at 4)

SOR subparagraph 2.k alleges that the mischaracterization of his termination on the security clearance application and subsequent investigative interviews in 2015 and 2020, constitute falsifications, as alleged in subparagraphs 2.l and 2.u. During an investigative interview in 2015, Applicant disclosed this information "prior to . . . being confronted with [the] developed employment record. . . ." (GE 13 at 4) He also discussed the circumstances surrounding his termination, including the company's contentions regarding his incompetent performance, together with the wrongful termination lawsuit he filed against the company after he was terminated. (GE 13 at 4)

In May 2018, Applicant's then-employer terminated his contract, as alleged in subparagraph 2.r. (GE 12 at 5) There is no record evidence setting forth the reason for the termination.

Subparagraph 2.s alleges that Applicant's then-employer issued him a written warning for failing to comply with requests for information relating to income tax issues he was having at the time. The record contains evidence of e-mail between Applicant and his employer regarding a request for documentation. (GE 5 at 16) The e-mail correspondence does not specify the documentation sought, nor does it contain any warnings.

The e-mail correspondence set forth in GE 5 does reference Applicant's poor work performance. Specifically, on July 2, 2018, the company president wrote the following:

. . . I've been repeatedly told that the function you are asked to perform are very basic and that you still struggle with them, both in terms of speed and accuracy. I don't think they can make the job any more basic than it is. (Item 5 at 16)

Four months later, Applicant's employer fired him for poor performance, as alleged in SOR subparagraph 2.t. (Answer at 5)

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 1(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

## **Analysis**

### **Guideline F: Financial Considerations**

The security concerns about financial considerations are set forth in AG ¶ 18, as follows:

Failure or inability 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 risk of having to engage in illegal acts to generate funds.

Applicant's history of delinquent debts generates security concerns under AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations." Applicant's outstanding federal income tax debt triggers the application of AG ¶ 19(f), "failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required."

The following mitigating conditions are potentially applicable:

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(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial problems were caused, in part, by the often erratic income he earned when he first began working as an independent contractor in 2010. (GE 13 at 9). As his income gradually stabilized he began contacting his creditors to begin paying the debts. Currently, all of the debts alleged in subparagraphs 1.a through 1.d have either been paid, or are being paid through payment plans. I resolve these subparagraphs in Applicant's favor. AG ¶ 20(b) is applicable.

Although Applicant has been paying his tax delinquency through an installment plan since 2018, he is currently one month behind on payments. Because Applicant is not in compliance with the payment plan, only the first prong of AG ¶ 20(g) applies.

Ultimately, given Applicant's outstanding tax delinquency, and his current trouble complying with the payment plan, it is too soon to conclude he has mitigated the financial considerations security concern.

### **Personal Conduct**

Under this guideline, "[c]onduct 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." (AG ¶ 15)

Applicant, a security clearance investigator, has been fired from five jobs in the past 11 years. His work performance at one of his jobs was so egregious that it prompted an OPM audit of his case load in 2015. Personnel security investigators are critical to the evaluation of applicants' security-worthiness. Incomplete case reports, unreported leads, or pertinent fact-gathering follow-ups that are overlooked – all oversights or failures that Applicant has demonstrated throughout his career – undermine the ability of adjudicators to make accurate security evaluations, and could result in undeserving individuals receiving clearances, or more importantly, deserving individuals being denied clearances. Consequently, although the guidelines do not explicitly address personnel concerns, outside of security infractions, the nature and seriousness of Applicant's personnel problems is significant enough to trigger the unmitigated application of AG ¶ 20(e), as follows:

Credible adverse information . . . that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant's omissions from his security clearance application and from successive subject interviews raise the issue of whether "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,” applies. (AG ¶ 16(a))

The evidence supporting the allegations set forth in SOR subparagraphs 2.q and 2.s is inconclusive. I resolve them in Applicant’s favor. Applicant was fired from one of his jobs, in part, because of falsely reporting that he had contacted a subject when he had not. Given that a falsification constitutes the basis of one of his terminations, the credibility of his subsequent explanations regarding his multiple omissions and mischaracterizations during the investigations process is fatally undercut. I conclude AG ¶ 16(a) applies to the remaining allegations without mitigation.

### **Whole-Person Concept**

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions under the alleged guidelines, and it does not warrant a favorable conclusion.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.p:	Against Applicant
Subparagraph 2.q:	For Applicant
Subparagraph 2.r:	Against Applicant
Subparagraph 2.s:	For Applicant
Subparagraphs 2.t – 2.u:	Against Applicant

## **Conclusion**

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

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Marc E. Curry  
Administrative Judge