



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



In the matter of:)
)
) ISCR Case No. 20-00620
)
Applicant for Security Clearance)

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

11/30/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Personal conduct security concerns were not established, but Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 12, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on December 9, 2020, and requested a hearing before an administrative judge. The case was assigned to me on April 28, 2021.

The hearing was convened as scheduled on July 1, 2021. Government Exhibits (GE) 1 and 3 through 8 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE B through G and admitted without objection.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor, where he has worked since January 2019. He served on active duty in the U.S. Army from 1996 until he retired with an honorable discharge as a chief warrant officer-3 in 2018. He has a bachelor's degree, which he earned in 2015, and post-graduate credits towards a master's degree. He is married with two children. (Transcript (Tr.) at 24-26; GE 1)

Applicant has a history of financial problems, including delinquent debts and criminal charges for passing bad checks. In 1998, he was charged with the misdemeanor offense of fraud – insufficient funds check. He pleaded guilty in 1999 in a deferred adjudication. He was fined \$200. In February 2015, he was arrested and charged with the misdemeanor offense of theft of property less than \$500 by check. The date of the offense was reported to be in October 2014. (Applicant's response to SOR; GE 7)

Applicant stated that he was solicited by a door-to-door salesman for a local newspaper. He wrote a check for \$25 and gave it to the salesman. His wife then gave Applicant \$25 in cash, which Applicant gave to the salesman. He asked the salesman to rip up the check. The salesman ripped something up in front of him, but it was not the check. Applicant stopped payment on the check "to be safe." He was unaware the newspaper attempted to cash the check until he was stopped for a minor traffic offense, and the warrant was discovered. The charge was dismissed two days later. (Tr. at 55-57; Applicant's response to SOR; GE 7)

Applicant was stopped for a traffic violation in September 2016. He was arrested when it was discovered that he had two warrants from 2000 for passing bogus checks. In October 2017, he pleaded guilty to the two charges in a deferred judgment. He was ordered to pay \$50 in fines, plus court costs, and \$10 in restitution for the two offenses. In October 2019, the court determined that all of the conditions of the deferred judgment were satisfied. The charges were dismissed, and the record expunged. (Tr. at 56; Applicant's response to SOR; GE 6, 7)

In October 2008, the then U.S. Army Central Personnel Security Clearance Facility (CCF) notified Applicant that it intended to revoke his security clearance based on his finances (delinquent debts) and personal conduct (not reporting his delinquent debts on his security clearance application). His security clearance was suspended pending adjudication. After considering Applicant's November 2008 response, the CCF granted Applicant's security clearance in May 2009, with the warning that "subsequent unfavorable information may result in the suspension of your clearance." There is no evidence that Applicant was informed that his security clearance was suspended or that he received a copy of the warning notice.¹ (GE 8)

¹ These matters were not alleged in the SOR and will not be used for disqualification purposes. They may be considered for the purpose of placing Applicant on notice of the importance of maintaining his finances in order and of providing accurate information on a security clearance application.

The delinquent debts in the current SOR were based on credit reports obtained in October 2016, June 2019, and March 2020. Applicant attributed his financial problems to prioritizing his military service over his finances. He deployed to Iraq and Afghanistan, and he served in the Republic of Korea. He estimated that he was away from home about 12 of the 22 years he served in the military. There were separations from his family where he had to maintain two households. His wife had a medical condition that prevented her from working. His wife handled the majority of the family's finances, and he was not always aware of the status of their finances. He contracted with a debt-resolution company in June 2019 to assist him in disputing inaccurate items on his credit report. (Tr. at 20-22, 34-36, 60-61; GE 1, 3-5; AE G)

Applicant and his wife borrowed about \$35,470 from a financial institution in May 2015 to finance a used 2013 sport utility vehicle (SUV) with about 15,000 miles. The payments were \$759 per month for 72 months. He stated that he bought a 100,000 mile extended warranty from the dealer. The SUV had problems with the transmission in about July 2017. The dealer told him that the problems were not covered by the warranty, and the repairs would cost about \$2,200. Applicant believes that the warranty should have covered the repairs. He decided not to repair the SUV and contacted the finance company to repossess it. (Tr. at 27-31, 33-34; Applicant's response to SOR; GE 3-5)

Applicant stated that \$12,539 remained on the auto loan when they stopped making payments. The October 2016 credit report lists the account as \$1,879 past due, with a balance of \$33,097. The June 2019 and March 2020 credit reports list the account as \$28,944 past due, with the same amount as the balance. The September 2020 credit report lists the account as charged off with a balance of \$12,539. The amount is almost assuredly the deficiency balance on the loan after the SUV was sold by the finance company, and not what remained on the account when they stopped making payments. Applicant stated that he was never contacted by the finance company about any balance due. The credit-repair company is disputing the debt. (Tr. at 28, 31-32; Applicant's response to SOR; GE 3-5)

SOR ¶ 1.b alleges \$12,272 owed to a financial institution that specializes in loans to military members. The October 2016 credit report lists the account as opened in August 2015 with \$287 payments per month for 36 months. The high credit was \$6,770. The account was reported as charged off for \$6,100, with a balance of the same amount. The date of last action was March 2016. The June 2019 credit report lists the account as \$12,272 past due, with the same amount as the balance. The credit-repair company disputed the debt, and it does not appear on the March 2020 credit report. (Tr. at 32-46; Applicant's response to SOR; GE 3-5)

Applicant stated that he paid the loan until the financial institution raised the interest rate in violation of their contract. He admitted that he borrowed about \$6,100 or \$6,700, but he believes he owed \$2,272 when he stopped paying the loan. That figure does not add up when the amount borrowed (at least \$6,100 in August 2015), the amount of the monthly payments (\$278), and the date the payments stopped (March 2016) are all factored in. I find the most accurate amount to be \$6,100, which is what he

owed in September 2016 when the loan was charged off. (Tr. at 32, 37-46; Applicant's response to SOR; GE 3-5)

SOR ¶ 1.c alleges a \$7,266 charged-off auto loan owed to the same financial institution that provided the charged-off auto loan alleged in SOR ¶ 1.a. Applicant essentially denied owing the debt, stating it was consolidated into the SOR ¶ 1.a debt. The credit-repair company disputed the debt. The October 2016 credit report lists the account as a separate auto loan that was opened in August 2015, with a high credit of \$15,341 and a balance of \$14,627. The loan was current as of that credit report. The June 2019 credit report lists the charged-off account as \$7,266 past due, with the same amount as the balance. The March and September 2020 credit reports list the account as charged off with a past-due amount and balance of \$7,175. I conclude that the loans alleged in SOR ¶¶ 1.a and 1.c are two separate auto loans; Applicant is responsible for both; and he has not paid either. (Tr. at 52-54; Applicant's response to SOR; GE 3-5)

Applicant denied owing the \$870 (SOR ¶ 1.d) and \$686 (SOR ¶ 1.e) debts owed to the same bank. He stated that the credit-repair company was able to remove the debts from his credit report. Applicant did not provide the basis of the dispute. The debts are listed on the October 2016 and June 2019 credit reports as becoming delinquent in 2012 and 2013 and charged off in 2013. The debts are not reported on any subsequent credit report. The debts are past the seven-year reporting window, so they should not be listed on the later reports regardless of whether they were disputed. (Applicant's response to SOR; GE 3-5)

SOR ¶ 1.f alleges a \$738 delinquent debt owed to a financial institution, but that amount appears to be based on a misreading of the credit reports. The October 2016 credit report lists the account as current with a balance of \$490. The two more recent credit reports list the account as \$738 and \$797 past due, with a balance of \$490. I consider \$490 to be the correct amount that was owed. Applicant stated that he settled the debt over the phone for \$350 in December 2020, but he did not have a receipt. Post-hearing, he submitted proof that he paid \$490 to the creditor on July 23, 2021. (Tr. at 46-48; Applicant's response to SOR; GE 3-5; AE B)

Applicant initially stated that he did not consider the \$467 debt alleged in SOR ¶ 1.g to be valid, and the credit-repair company was disputing the debt. The debt became delinquent in about September 2014. He paid the debt in full in July 2021. (Tr. at 48-49, 51; Applicant's response to SOR; GE 3-5; AE F)

SOR ¶ 1.h alleges a \$460 delinquent debt for an apartment lease. Applicant stated that he exercised the military clause in the contract to end the lease early, and that he paid the last month's rent in about November 2017. He stated that he nonetheless decided to accept a settlement of the debt for \$230, which he paid in December 2020. Applicant stated that he did not have a receipt. Post-hearing, he submitted proof that he paid \$345 to the creditor on July 1, 2021. (Tr. at 51-52; Applicant's response to SOR; GE 3-5; AE C, D)

Applicant denied owing the \$371 (SOR ¶ 1.i) and \$353 (SOR ¶ 1.j) debts owed to financial institutions. He stated that the credit-repair company was able to remove the debts from his credit report. Applicant did not provide the basis of the dispute. The \$371 debt is listed on the June 2019, March 2020, and September 2020 Equifax and TransUnion credit reports with a date of last action of May 2016. The \$353 debt is listed on the October 2016 and June 2019 credit reports with a date of last action of September 2014. The debt is not reported on any subsequent credit report. (Applicant's response to SOR; GE 3-5)

SOR ¶ 1.k alleges a \$474 charged-off debt. Applicant stated that he does not consider the debt valid, and the credit-repair company was disputing the debt. Applicant did not provide the basis of the dispute. The debt is listed by TransUnion on the October 2016 combined credit report, with a date of last action of September 2014. It is also listed on the September 2020 TransUnion credit report. Applicant stated that he called the creditor and was informed that they had no outstanding balance on the account. (Applicant's response to SOR; GE 3-5)

Applicant denied owing the \$151 debt to a cable provider (SOR ¶ 1.i). He stated that he was the victim of identity theft, and he personally resolved the matter with the cable provider. The debt is listed on the October 2016 credit report with an activity date of March 2012. The debt is not reported on any subsequent credit report. (Applicant's response to SOR; GE 3-5)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in September 2016. He reported his 2016 arrest for the bogus check charges from 2000. He reported that he was investigated for a security clearance in 2006. He reported that he had never had a security clearance "denied, suspended, or revoked." He did not report any adverse matter or delinquent debts under the financial questions. (GE 1)

Applicant denied intentionally providing false information on the SF 86. He stated that he never received an SOR in 2008, and he was unaware that his security clearance had been suspended. His statement that he never received the 2008 SOR is contradicted by his signed, detailed response to that SOR. There is no documentary evidence that he was informed that his security clearance was suspended or that he received a copy of the warning notice. Applicant stated that his wife handled the family's finances, and he was unaware of the extent of his financial problems when he submitted the SF 86. (Tr. at 23, 58, 64; Applicant's response to SOR)

Applicant submitted a letter attesting to his excellent job performance and strong moral character. He is praised for his dedication, work ethic, reliability, and trustworthiness. (Applicant's response to SOR)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E: Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally providing false information on the 2016 SF 86. Some of his statements are a bit difficult to accept, particularly since he went through similar events in 2008. I am left with two choices: Applicant is either a liar or the discrepancies on the SF 86 resulted from a gross disregard for his finances. In light of his many years of honorable service, I accept the latter. AG ¶ 16(a) is not applicable. Personal conduct security concerns are concluded for Applicant. The gross disregard for his finances will be addressed below.

Guideline F, Financial Considerations

The security concern for financial considerations 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant's financial history, which includes multiple delinquent debts and bad check offenses, is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions. I believe the bad check offenses resulted from negligence, not from an intentional financial breach of trust such as fraud. AG ¶ 19(d) is not applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his financial problems to prioritizing his military service, including multiple deployments, over his finances. There were separations from his family where he had to maintain two households. His wife had a medical condition that prevented her from working. His wife handled the majority of the family's finances, and he was not always aware of the status of their finances. Those events would provide more mitigation had Applicant done more to resolve his debts and if he had not been through this before.

Applicant stated that he settled the debts alleged in SOR ¶¶ 1.f and 1.h in December 2020. Post-hearing, he established that he paid the debts in SOR ¶¶ 1.f, 1.g, and 1.h, but not until after the hearing in July 2021. Those debts are mitigated. The \$151 debt to a cable provider (SOR ¶ 1.i) from 2012 is also mitigated. The bad checks have been resolved. Those allegations are also mitigated.

I am satisfied that the remaining debts, even if they no longer appear on Applicant's credit report, are his debts, and they are not paid. There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's delinquent debts are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress;
- and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines and F in my whole-person analysis. I also considered Applicant's character evidence and years of honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude personal conduct security concerns were not established, but Applicant did not mitigate the financial considerations security concerns.

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.e:	Against Applicant
Subparagraphs 1.f-1.h:	For Applicant
Subparagraphs 1.i-1.k:	Against Applicant
Subparagraphs 1.l-1.o:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge