



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



In the matter of:)
)
) ISCR Case No. 19-03351
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

12/14/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 10, 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 May 28, 2020, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on December 1, 2020, and reassigned to me on June 1, 2021. The hearing was convened as scheduled on August 24, 2021. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through L, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted documents that I have marked AE M through O and admitted without objection.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor, for whom he has worked since December 2020. He served on active duty in the U.S. Navy from 2012 until he was honorably discharged in 2016. He seeks to retain a security clearance, which he has held since he was in the Navy. He is attending college in pursuit of a bachelor's degree. He is divorced. He and his fiancée have a child, who was born in 2020. (Transcript (Tr.) at 17-19, 33-34, 92; GE 1; AE M)

While serving in the Navy in November 2014, Applicant had access to a CONEX box, a container used to transport and store equipment. He went into the box and stole camera equipment. The unit that owned the box initially reported to the Naval Criminal Investigative Service (NCIS) that 37 cameras valued at about \$20,000 were stolen. An inventory of the equipment disclosed that three cameras and nine lenses totaling about \$3,438 were missing. (GE 2, 3, 10)

Applicant attempted to sell a camera and a lens to another service member. He sent pictures of the equipment to the service member. A third service member found out about it, and advised Applicant to return the equipment. Applicant admitted to other service members that he took camera equipment home, but he had returned the equipment. (GE 3, 3, 10)

Applicant waived his right to remain silent when he was questioned by the NCIS in November 2014. He lied and stated that he did not take the missing equipment, and he did not attempt to sell it. He was questioned again in January 2015. He admitted that he had not been truthful during the first interview. He stated that he "was scared and in flight mode during [his] first interview." He stated that he was "a good Sailor and the thought of being in trouble frightened [him]." He stated that he and a petty officer went into the box, and the petty officer took about three to four cameras. The petty officer told him that the cameras appeared to be from his previous unit and were not serialized, so the Navy could not account for them. He told Applicant that he planned to use them as Christmas presents. Applicant stated that after seeing a petty officer take cameras, he decided to take one also. He admitted that he took a camera and a lens home. (Tr. at 35-37; GE 10)

In March 2015, Applicant received nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for violations of Articles 107 (false official statement) and 121 (larceny and wrongful appropriation) of the UCMJ. He was reduced one pay grade to E-3. (Tr. at 39; GE 1-3, 10)

Applicant claims that he has accepted responsibility for his crimes, but he really has not. In his January 2018 Questionnaire for National Security Positions (SF 86), he wrote "I took a camera that was given to me when I found out it was stolen I returned the item." During his background interview in January 2019, he stated that a supervisor told him that the camera equipment had been purchased as surplus items. He stated that he took the camera from the supervisor because he hoped to be assigned to the supervisor's unit and did not want to create any strife with the supervisor. He stated that

he took the camera with the understanding that it was not a crime because the equipment was surplus. He stated that the next day, another service member came across the box and asked Applicant what happened to their box and the equipment inside it. Applicant told the investigator that he immediately went to his backpack and retrieved the camera. He told the investigator that he lied to NCIS because of a “bro code” of protecting the supervisor from discipline because Applicant wanted to get into the same unit. (GE 1, 2)

Applicant provided similar testimony at his hearing. He stated that he did not realize it was stealing or a crime when he took the camera. (Tr. at 34-45, 99-108) I did not find any of his testimony credible. I find that he stole at least one camera and a lens, lied about it to the NCIS, and continued to lie about it up to and during his security clearance hearing.

Applicant worked for a defense contractor in Iraq from about August 2017 to December 2017. His employer at the time filed an incident report on the Joint Personnel Adjudication System (JPAS) that stated that Applicant “abandoned his job site . . . without notification of chain of command,” and caused the site to drop below “contract minimum operating requirements and placed warfighters at risk.” Applicant wrote in his 2018 SF 86 that he left the job “due to management’s poor ability to handle confrontation on the site.” He stated in his background interview that his supervisor created a hostile work environment. Applicant testified that his request to move to another site in November 2017 was disapproved. He was told if he did not like the site, he should quit, which he did. The company wanted Applicant to return to the United States to out-process, but Applicant refused because he wanted to stay in Iraq and work for another contractor. He provided statements from individuals who shared his negative view of the company. (Tr. at 45-66, 109-122, 131-133; GE 1-4; AE I-M)

Applicant was hired by another defense contractor in Iraq the day after he left the job site of his previous employer. He worked for the company in Iraq from December 2017 to March 2018, and from May 2018 until he was sent home early in June 2018 for leaving the base without following proper protocol and poor performance. His employment was terminated a few days later in the United States. Applicant denied any misconduct. He stated that he complied with all of the regulations regarding leaving the base. (Tr. at 66-82, 122-129; GE 2, 5)

The delinquent debts in the SOR were based on credit reports obtained in May 2018, March 2019, and November 2019. Applicant attributed his financial problems to mismanagement of his finances by his ex-wife while he was working overseas. He stated that she opened accounts without his knowledge. He testified that the charged-off credit union debt alleged in SOR ¶ 2.f is the only debt in the SOR that he took out himself. He also stated that divorce, the COVID-19 pandemic, and the birth of his child adversely affected his finances. He contracted with a credit-repair company in June 2019 to assist him in disputing inaccurate items on his credit report. (Tr. at 20-22, 84-94; GE 1, 3-5; AE F)

Applicant paid the \$566 debt in SOR ¶ 2.a with a credit card on June 3, 2021. He paid the \$389 debt in SOR ¶ 2.b with a credit card on July 1, 2021. (Tr. at 19-22, 92; GE 6-9; AE A, B)

SOR ¶ 2.c alleges \$1,536 owed to a financial institution that specializes in loans to military members. Applicant denied owing the debt. He testified that he never had a loan from that financial institution. However, during his January 2019 background interview, he acknowledged the debt and stated that he planned to contact the creditor when payments could be made. The credit reports list the account as becoming delinquent in 2013. The debt is not listed on the November 2020 credit report. The debt was past the seven-year reporting window, so it should not be listed on the report regardless of whether it was disputed. (Tr. at 22-23; Applicant's response to SOR; GE 2, 6-10)

The \$960 unidentified medical debt in SOR ¶ 2.d is listed on the November 2019 Equifax credit report, but not the November 2020 Equifax report. (Tr. at 23-24; GE 6, 7)

The \$4,788 delinquent debt in SOR ¶ 2.e is listed on every credit report in evidence. Applicant testified that he disputed the debt because the account was opened in his ex-wife's name. He reported the debt on his January 2018 SF 86 with the comment: "I originally was not smart with my money [and] spent money I did not have." He confirmed it was his debt during his January 2019 background interview. He stated that he would make payments on the debt as soon as more pressing accounts were paid off. (Tr. at 25-26; GE 1, 2, 6-9; AE F, O)

SOR ¶ 2.f alleges \$8,774 owed to a credit union for a charged-off debt. The credit reports list the balance on the account as \$4,388. In February 2021, Applicant agreed to pay \$90 per month to the credit union. The credit union reported in June 2021 that Applicant was in compliance with the agreement; he had paid a total of \$450; and the remaining balance was \$3,938. He testified that he increased the monthly payment to \$150. (Tr. at 26, 87; GE 6-9; AE C)

Applicant denied owing the \$1,674 charged-off debt in SOR ¶ 2.g. He testified that he had no recollection of opening the account, and that he suspected his ex-wife opened the account without his knowledge. He disputed the debt. The debt is listed on credit reports through November 2019. The most recent balance was \$4,752. The credit reports list the account as becoming delinquent in 2013. The debt is not listed on the November 2020 credit report. The debt was past the seven-year reporting window, so it should not be listed on the report regardless of whether it was disputed. (Tr. at 28; Applicant's response to SOR; GE 6-9; AE O)

Applicant paid the \$492 and \$504 debts in SOR ¶¶ 2.h and 2.i in about March 2020. (Tr. at 29-30, 94-95; GE 6-8; AE D, E)

Applicant denied owing the \$1,581 charged-off debt in SOR ¶ 2.j. He testified that he had no recollection of opening the account. He disputed the debt. The debt is listed on credit reports up through November 2019. The most recent balance was

\$5,123. The credit reports list the account as becoming delinquent in 2013. The debt is not listed on the November 2020 credit report. The debt was past the seven-year reporting window, so it should not be listed on the report regardless of whether it was disputed. He acknowledged responsibility for the debt during his January 2019 background interview. (Tr. at 30; Applicant's response to SOR; GE 2, 6-9)

SOR ¶ 2.k alleges a \$2,437 charged-off debt. Applicant disputed the debt, and stated that it was deleted from his credit report. The debt is listed on every credit report in evidence, but his credit-repair company reported that it was deleted by the three credit reporting agencies. The credit reports list the last payment was received on the account in April 2014. The debt is not listed on the November 2020 credit report. The debt was past the seven-year reporting window, so it should not be listed on the report regardless of whether it was disputed. (Tr. at 31; Applicant's response to SOR; GE 6-9; AE O)

In June 2021, Applicant used a credit card to pay a \$1,197 debt that was not alleged in the SOR. He stated that his finances have stabilized. He admitted that he owed about \$4,600 to the IRS for income taxes for tax year 2019.¹ (Tr. at 31-32, 96-98, 136-139; AE G, H)

Applicant submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his professionalism, patriotism, dedication, work ethic, compassion, reliability, trustworthiness, loyalty, integrity, and ability to follow rules and regulations. (AE K-N)

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

¹ Applicant's unpaid taxes were not alleged in the SOR. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered when assessing Applicant's financial situation, in the application of mitigating conditions, and under the whole-person analysis.

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 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; and
- (c) a history of not meeting financial obligations;

Applicant has a history of financial problems, including multiple delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

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 mismanagement of his finances by his ex-wife while he was working overseas, and that she opened accounts without his knowledge. His testimony that the charged-off credit union debt alleged in SOR ¶ 2.f is the only debt in the SOR that he took out himself is countered by his previous statements that he was responsible for a number of the SOR debts. He stated that divorce, the COVID-19 pandemic, and the birth of his child also adversely his finances. He commented in his January 2018 SF 86: "I originally was not smart with my money [and] spent money I did not have."

Applicant is credited with paying the \$566, \$389, \$492, and \$504 debts in SOR ¶¶ 2.a, 2.b, 2.h, and 2.i. He has a payment agreement for the debt in SOR ¶ 2.f. Those allegations are mitigated. The unidentified medical debt in SOR ¶ 2.d is 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. I also note that he has unpaid federal taxes from tax year 2019. 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.

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 conditions are potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative issue areas 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;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant's criminal offenses in the military and his workplace misconduct reflect questionable judgment and an unwillingness to comply with rules and regulations. His conduct also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(d) is applicable to the workplace misconduct. Applicant's false statement to NCIS established AG ¶ 16(b). AG ¶ 16(c) is not perfectly applicable to the false statement and the larceny of the camera equipment because that conduct is sufficient for an adverse determination under the criminal conduct guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the

stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant accepted only limited responsibility for his crimes in the military and virtually no responsibility for his conduct in Iraq. I did not find any of his testimony credible. He lied to the NCIS, and he has continued to lie up to and during his security clearance hearing.

I cannot find with any certainty that Applicant's problematic behavior will not recur. His conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. Personal conduct security concerns 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 E and F in my whole-person analysis. I also considered Applicant's favorable character evidence and honorable discharge. However, that is insufficient to overcome his ongoing financial problems and problematic conduct.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct and 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 E:	Against Applicant
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 2.a-2.b:	For Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	Against Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	Against Applicant
Subparagraphs 2.h-2.i:	For Applicant
Subparagraphs 2.j-2.k:	Against 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