



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



In the matter of:)
)
) ISCR Case No. 20-03551
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Department Counsel
For Applicant: *Pro se*

January 14, 2022

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On June 9, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on July 7, 2021. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 7, 2021, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant and received by him on September 29, 2021. The FORM notified

Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 7, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 7.

Findings of Fact

Applicant is 45 years old, and married with five children, and one step-child. He has a high school diploma and some college. He is employed by a defense contractor as a Senior CAD Designer. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR alleged that Applicant incurred a number of delinquent debts owed to the Department of Education for student loans, and consumer debts that were either past due, charged off or placed for collection totaling approximately \$58,000. In his answer, Applicant admits each of the delinquencies. Credit reports of the Applicant dated October 24, 2019; and March 22, 2021, confirm this indebtedness. (Government Exhibits 5 and 6.) Applicant has never applied for a security clearance before.

Applicant began working for his current employer in August 2019. Since then, there have been no noted interruptions in his employment. Prior to his current employment, Applicant experienced multiple periods of unemployed from March 2019-August 2019; October 2017- February 2018; and February 2015-March 2015 that he states attributed to his current financial problems. Applicant explained that at certain times over the years, he has had to make the difficult decision of either paying off his creditors, or keeping a roof over his family's head and food on the table. When faced with this decision, he has always puts his family first. Applicant stated that he took out a number of student loans to further his education. He had hoped to complete a college engineering program that he enrolled in. However, because he needed to work full time to support his family, he could not complete the program. In addition, he was laid off from work a number of times, through no fault of his own. When this happened, he defaulted on his student loan payments and has been unable to get back on track. At some point he also separated from his wife for a two year period, and this caused additional financial hardship. He and his wife have since reconciled their relationship and things have improved since he now has stable employment. Applicant states that he plans to enter into a payment plan for the student loans, and he also plans on resolving the other outstanding consumer debts.

The following delinquent debts are delinquent and of security concern:

1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., and 1.r. Ten separate delinquent debts owed to Department of Education were placed for collection in the approximate amounts of \$11,063; \$6,457; \$5,786; \$5,218; \$5,027; \$3,643; \$3,399; \$2,028; \$1,279; and \$1,795. Applicant provided no documentary evidence to show that any of these accounts are current or being paid in any form or fashion. Accordingly, these allegations are found against Applicant.

1.i. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$1,852. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.k. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$735. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. Accordingly, this allegation is found against Applicant.

1.l. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$514. Applicant has provided no documentary evidence to show that the debt has been paid or is otherwise resolved. Accordingly, this allegation is found against Applicant.

1.m. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$467. Applicant has provided no documentary evidence to show that the debt has been paid or is otherwise resolved. Accordingly, this allegation is found for against Applicant.

1.n. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$101. Applicant has provided no documentary evidence to show that the debt has been paid or is otherwise resolved. Accordingly, this allegation is found for against Applicant.

1.o. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$513. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.p. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$634. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.q. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$1,692. Applicant provided no documentary evidence to

show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.s. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$349. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.t. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$4,421. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.u. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$142. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.v. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$289. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

1.w. A delinquent debt owed to a creditor for an account was placed for collection in the approximate amount of \$1,047. Applicant provided no documentary evidence to show that the debt is being paid or is otherwise resolved. This allegation is found against Applicant.

Guideline E – Personal Conduct

The Government alleged that Applicant is ineligible for a clearance because he engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness, and ability to protect classified or sensitive information.

From 1994 through 2016, Applicant was arrested on sixteen separate occasions for various crimes. The criminal charges include theft, drug possession, driving under the influence and driving while license suspended or revoked. Applicant admits each of the allegations set forth under this guideline. Applicant attributes these arrests to being young and hanging around the wrong type of people. Applicant states that since 2016, he has attempted to improve himself and change his life by educating himself and raising his family. Allegations will be discussed in chronological order.

2.p. In July 1994, Applicant was arrested and charged with Possession of Cocaine with Intent to Sell, Manufacture, Deliver , ETC. Schedule II-Felony. 2.o. In May 1996, Applicant was arrested and charged with Marijuana Possession. 2.n. In August 1996, Applicant was charged with Theft by Shoplifting. 2.m. In June 1997,

Applicant was arrested and charged with Deposit Account/Bad Checks. 2.l. In May 1999, Applicant was arrested and charged with Purchase, Possession, Manufacture, Distribution, or Sale of Marijuana-Felony. 2.k. In October 2000, Applicant was arrested and charged with Marijuana Distribution-Felony, and Driving While License Suspended. 2.j. In January 2001, Applicant was arrested and charged with Marijuana Possession, Resisting Officer, and Possession of Drug Paraphernalia. 2.i. In April 2001, Applicant was arrested and charged with Aggravated Battery-Pregnant Female-Felony. 2.h. In November 2001, Applicant was arrested and charged with Purchase, Possession, Manufacture, Distribution, or Sale of Marijuana-Felony and Hindering Apprehension or Punishment of a Criminal. 2.g. In September 2002, Applicant was arrested and charged with Probation Violation-Felony, and Battery. 2.g. In August 2003, Applicant was arrested and charged with Driving Under the Influence of Alcohol. 2.e. In January 2004, Applicant was arrested and charged with Marijuana Possession. 2.d. In April 2004, Applicant was arrested and charged with Driving While License Suspended or Revoked. 2.c. In September 2011, Applicant was arrested and charged with Driving Under the Influence of Alcohol. 2.b. In March 2015, Applicant was arrested and charged with Driving While License Suspended or Revoked. 2.a. In December 2016, Applicant was arrested and charged with Failure to Appear for Fingerprintable Charge.

Applicant completed a security clearance application dated September 30, 2019. (Government Exhibit 3.) In response to Section 22, regarding his Police Record, Applicant was asked, "In the past seven years have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? . . . In the past seven years have you been arrested by any police officer, sheriff, marshal, or any other type of law enforcement official? . . . In the past seven years have you been charged, convicted or sentenced of a crime in any court? . . . In the past seven years have you been or are you currently on probation or parole? . . . Are you currently on trial or awaiting a trial on criminal charges? This section continues by asking if he has EVER had the following happened to him. Have you EVER been charged with any felony offense? Have you EVER been charged with an offense involving alcohol or drugs?" Applicant answered, "No." Applicant failed to list his arrests in December 2016 for Failure to Appeal for Fingerprintable Charge, and his arrest in March 2015 for Driving While License Suspended or Revoked. Applicant should have at least listed these two arrests in response to Section 22, as they occurred within the last seven years.

Applicant should also have listed his Felony charges set forth in allegations 2.g. that occurred in September 2002, 2.h., that occurred in November 2001, 2.i., that occurred in April 2001, 2.k., that occurred in October 2000, 2.l., that occurred in May 1999, and 2.p., that occurred in July 1994, as the question asks if he has EVER been charged with a Felony. Also, any charges that involved alcohol or drugs should have been listed, which would include 2.c., 2.e., 2.f., 2.j., and 2.o.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance 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 as to 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant incurred significant delinquent debt that he has not paid. At this time there is insufficient information in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. There is no evidence in the record to show that any regular monthly payments of any sort are being made toward his debts. In fact, they all remain outstanding. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

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

There is some evidence in the record to show that circumstances beyond the Applicant's control contributed to Applicant's financial difficulties. There were multiple periods of unemployment, underemployment, and his separation from his wife. However, since August 2019, when he started working for his current employer he has done nothing to show that he has addressed any of his delinquent debts. None of the mitigating conditions apply. This guideline is found against Applicant.

Guideline E - Personal Conduct

The security concern for the personal conduct 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 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:

(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.

(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 while-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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

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

(3) a pattern of dishonesty or rule violations.

AG ¶ 17 provides conditions that could mitigate security concerns. I have considered each of the mitigating conditions below:

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

(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;

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

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon

the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant's extensive criminal history coupled with his failure to answer the questions about his police record accurately shows a pattern of irresponsible and unreliable conduct. Applicant not only failed to list his most recent arrests and charges that occurred within the last seven years from the date he completed the application, but he failed to read on to answer the questions accurately that ask him if he has EVER been charged with a Felony or charged with a drug or alcohol violation. Applicant's carelessness or dishonesty shows poor judgment and unreliability. Applicant knew or should have known to answer the questions on his application carefully and accurately. Deliberately concealing material information from the government on a security clearance application raises serious questions about one's credibility and trustworthiness. Carelessness shows immaturity and irresponsibility. In either case, none of the mitigating conditions are applicable and Applicant does not meet the eligibility requirement to access classified information. This guideline is found against the Applicant.

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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. Applicant did not submit a response to the FORM. Insufficient mitigation has been shown. Accordingly, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct 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. through 1.x.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a. through 2.q.	Against Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge