



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



In the matter of:)	
)	
)	ISCR Case No. 20-01208
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2022

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines E (personal conduct), F (financial considerations), and H (drug involvement and substance misuse). Eligibility for access to classified information is granted.

Statement of the Case

On February 5, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, F, and H. The SOR was forwarded to Applicant’s employer in August 2021, and he received it on August 19, 2021. Applicant responded to the SOR on August 19, 2021, and requested a hearing before an administrative judge.

The case was assigned to me on December 7, 2021. The hearing was convened as scheduled on February 15, 2022. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. The objection to GE 6 was sustained. Applicant testified and submitted Applicant’s Exhibits (AE) A through D, which were admitted without objection.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor. He has worked for his current employer or a predecessor company since 2016. He is applying for a security clearance for the first time. He has a General Educational Development (GED) high school equivalency diploma. He has never married, but he is living with his girlfriend who he expects to become his fiancée. He has a nine-year-old child. (Transcript (Tr.) at 30-31; GE 1)

Applicant was arrested in September 2013 when he was 19 years old and charged with assault causing bodily injury to a family member (or a person with whom the defendant had or had had a dating relationship). The charge was dismissed in December 2014 after the county attorney moved the court to dismiss the charge because the “evidence [was] insufficient.” (Tr. at 23, 26-28; Applicant’s response to SOR; GE 1; AE C, D)

Applicant denied striking the mother of his child. He credibly stated that she called the police and claimed that he pushed her against a wall after he asked her to move out of his apartment. Applicant has had custody of their child since about 2015. The mother was ordered to pay child support, but she made a few initial payments and then nothing since. (Tr. at 23, 26-31; Applicant’s response to SOR; GE 1)

Applicant used marijuana sporadically from when he was a teenager until about 2017. His most recent use in 2017 was in a state where marijuana use was not against state law. He used Xanax that was not prescribed to him in 2009 when he was in high school. He used cocaine in 2011 and 2016. (Tr. at 24-25, 39; Applicant’s response to SOR; GE 1)

Applicant reported his use of marijuana and cocaine on the Questionnaire for National Security Positions (SF-86) he submitted in January 2018. He has not used any illegal drugs since 2017. He credibly testified that he wants to be a good role model for his child, and he does not intend to use marijuana or any other illegal drug in the future. (Tr. at 25-26, 39; Applicant’s response to SOR; GE 1)

Applicant has a history of financial problems, which he attributed to unemployment and being a single parent without the benefit of child support from his child’s mother. He also admitted that he made irresponsible financial decisions, such as buying a vehicle that was more than he could afford. The SOR alleges a \$17,987 defaulted auto loan and 19 additional delinquent debts totaling about \$7,637. (Tr. at 23-24, 34; Applicant’s response to SOR; GE 1)

SOR ¶ 1.a alleges a \$17,987 defaulted auto loan. The vehicle was repossessed in about 2017, leaving a deficiency of \$17,987 after it was sold at auction. Applicant initiated a \$505 monthly payment plan in April 2021 (after the SOR was issued, but before he received it). He made ten payments through January 2022, totaling \$5,050. The balance in February 2022 was \$13,156. (Tr. at 20-22, 32-33; Applicant’s response to SOR; GE 1-4; AE A, B)

Applicant paid the \$817 delinquent payday loan (SOR ¶ 1.c) in February 2021. He paid the \$817 delinquent telecommunications debt (SOR ¶ 1.m) in about May 2020. (Tr. at 38; Applicant's response to SOR; GE 2-4; AE A)

Applicant asserted that he paid the \$459 and \$397 delinquent debts (SOR ¶¶ 1.d and 1.e) owed to a collection company on behalf of two financial institutions. He stated that he changed banks and did not have documents establishing the payments. The debts are reported by all three credit-reporting agencies on the February 2018 combined credit report, and they both appear on the March 2020 Equifax credit report. The debts do not appear on the October 2021 Equifax credit report nor the February 2022 Experian credit report. The debts did not "age off" the reports because they were not past the seven-year reporting window. One of the financial institutions issued Applicant a new credit card in June 2020, which bolsters his assertion that he paid the older credit card account. I find that both debts have been paid. (Tr. at 37-39; Applicant's response to SOR; GE 2-4; AE A)

Applicant denied owing the \$150 and \$87 delinquent debts alleged in SOR ¶¶ 1.o and 1.q. He attempted to contact the creditors, but the creditors could not confirm that he owed the debts. The \$150 debt is reported by all three credit-reporting agencies on the February 2018 combined credit report. The \$87 debt is reported by TransUnion on that report. Neither debt is reported on any subsequent credit report. (Tr. at 21; Applicant's response to SOR; GE 2-4; AE A)

Applicant denied owing the 13 delinquent medical debts alleged in the SOR. The debts are listed on the February 2018 combined credit report, the March 2020 Equifax credit report, or both credit reports. None of the debts are reported on any subsequent credit report. Four of the alleged debts do not identify a creditor. He stated that he paid four of the debts. He attempted to contact the creditors for the remaining debts, but the creditors could not confirm that he owed the debts. (Tr. at 21; Applicant's response to SOR; GE 2-4; AE A)

Applicant paid other debts that were not alleged in the SOR. With the possible exception of one unidentified \$250 medical debt, none of the SOR debts became delinquent after 2018. The defaulted auto loan, which he has been paying since April 2021, is the only delinquent account with a balance reported on the two most recent credit reports. He stated that he planned to continue paying that debt and he will be debt-free within two years. He stated that he learned from his mistakes and poor financial decisions, and his finances are greatly improved. He follows a noted financial expert, but he has not received formal financial counseling. (Tr. at 20-24, 40-45; GE 2-4; AE A)

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 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;

(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 unemployment and being a single parent without the benefit of child support from his child's mother. He also admitted that he made irresponsible financial decisions.

Applicant began paying his debts before he received the SOR. He paid four small debts and other debts that were not alleged in the SOR. He has a \$505-per-month payment plan for the repossessed vehicle loan, and he documented ten payments totaling \$5,050. He has legitimate questions about the validity of the 13 medical debts and the 2 remaining small non-medical debts. None of the debts appear on the October 2021 Equifax credit report or the February 2022 Experian credit report.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant has a plan to resolve his financial problems, and he took significant action to implement that plan. His finances no longer generate questions about his judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about his finances are mitigated.

Guideline H, Drug Involvement and Substance Misuse

¶ 24: The security concern for drug involvement and substance misuse is set out in AG

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

as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

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

Applicant used marijuana sporadically from when he was a teenager until about 2017. He used Xanax that was not prescribed to him in 2009. He used cocaine in 2011 and 2016. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:
 - (1) disassociation from drug-using associates and contacts;
 - (2) changing or avoiding the environment where drugs were used; and
 - (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant has not used any illegal drugs since 2017. He credibly testified that he wants to be a good role model for his child, and he does not intend to use marijuana or any other illegal drug in the future. He fully disclosed his drug involvement on his SF-86 and throughout the security clearance proceedings, which bolsters his credibility. His conduct no longer casts doubt on his reliability, trustworthiness, and good judgment. I find that Applicant has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

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:

(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; 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 was arrested in September 2013 and charged with assault upon the mother of his child. AG ¶¶ 16(c) and 16(e) have some applicability.

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

(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;

(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 credibly denied striking the mother of his child. He stated that she called the police and claimed that he pushed her against a wall after he asked her to move out of his apartment. The charge was dismissed in December 2014 after the county attorney moved the court to dismiss the charge because the “evidence [was] insufficient.” I also note that Applicant has had custody of their child since about 2015; this was his only arrest; and there are no other allegations of domestic violence.

I find that the conduct is unsubstantiated and from a source of questionable reliability; it is unlikely to recur; it does not cast doubt on Applicant’s current reliability, trustworthiness, and good judgment; and it does not serve as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(e), and 17(g) are applicable.

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, F, and H in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guidelines E, F, and H.

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:	For Applicant
Subparagraphs 1.a-1.t:	For Applicant

Paragraph 2, Guideline H:	For Applicant
Subparagraphs 2.a-2.c:	For Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraph 3.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge