



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 19-03327

Appearances

For Government:

Jeff A. Nagel, Esquire, Department Counsel

For Applicant:

Pro se

April 11, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on March 26, 2018. (Item 1.) On September 28, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines E (Personal Conduct) and F (Financial Considerations). The action was taken under Executive Order 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) before July 12, 2021, and requested his case be decided on the written record in lieu of a hearing. (Item 1.) In his Answer he admitted all the allegations in the SOR except 1.f, which he did not admit or deny. Applicant's sole statement of explanation was, "Please see previous statements on all items." On July 13, 2021, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 9, was provided to Applicant, who received the file on July 22, 2021.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional information. The case was assigned to me on September 22, 2021. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 55 years old and married to his second wife. He has two children and two stepchildren. Applicant served in the Army and received an Honorable Discharge in 1990. Applicant has been employed by a defense contractor (Company A) since 2018 as a Management Specialist 3 and seeks to obtain or retain national security eligibility and a security clearance in connection with his employment. (Item 2 at Sections 13A, 15, and 17.)

Paragraph 1 (Guideline E, Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations, including making false statements during the clearance screening process. Applicant admitted all the allegations under this paragraph, except 1.f to which he did not respond either way.

Applicant worked for Company B from 2006 to 2017. His last position was as a Project Lead. SOR allegations 1.a, 1.b, and 1.c concern his employment with this firm.

1.a. Applicant admitted in his Answer that he received a written warning in about January 2014 from Company B due to his failure to submit his daily time as required by policy. The record does not contain any information that would explain or otherwise justify his conduct.

1.b. Applicant admitted in his Answer that he received a Corrective Action Memo from Company B in July 2017. He received this memo because of a failure to follow company policy in executing tasks as directed, failure to report information, and transposing information to hide the current status of a business proposal. Applicant was subsequently requested to take paid time off in order to allow the rest of his team to

complete the proposal package. The record does not contain any information that would explain or otherwise justify his conduct.

1.c. Applicant was terminated from his employment with Company B in September 2017 for theft of company property. In his e-QIP under Section 13A, Applicant admitted the termination, stating, "Failed to follow company policy by taking home scrap material. The scrap material was returned within 3 days however, the company terminated my employment." (Item 2.)

In his termination letter Applicant's Program Manager stated:

[I]t has been determined that you removed a considerable amount of government owned aircraft parts from the workplace to your home without prior authorization and in violation of Company rules and precedent. Upon questioning, you admitted to taking the material without permission and that you were aware that your conduct is prohibited and a violation of the Employee Handbook. (Item 4.)

Company B reported the termination to the DoD in a JPAS Incident History Report. Company B stated that the value of the property taken by Applicant was \$7,000. (Item 3.)

Applicant was interviewed by an investigator from the Office of Personnel Management on September 19, 2018. A report of investigation (ROI) was prepared by the investigator, which Applicant later adopted stating that it was accurate. In the ROI Applicant admitted taking the material, which he thought was scrap to be thrown out. Applicant further stated that he believed the value of the material was only \$600 or \$700. Applicant returned the material after being confronted by management concerning his conduct. (Item 5 at 5.)

The ROI stated, "Subject [Applicant] felt bad for creating that situation and felt stupid for taking the material. The incident was the most humiliating situation Subject has ever been through. Subject lost his job, which he liked very much." (Item 5 at 5.)

The next three allegations concern Applicant's responses to his e-QIP, dated March 26, 2018. (Item 2.)

1.d. Section 13A of Applicant's e-QIP concerned his employment activities. The form requires specific answers to questions about Applicant's employment activities within 10 years. Under this section Applicant set forth his employment with Company B from 2010 to 2017 and the nature of his termination. The questionnaire also asked, "**Received Discipline or Warning**: For this employment, **in the last seven (7) years** have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" [All emphasis in original.] Applicant answered, "No." This was a false answer as Applicant failed to disclose the written warning he received in 2014, or the Corrective Action Memo

he received in 2017, as set forth in subparagraphs 1.a and 1.b, above. The record does not contain any information that would explain or otherwise justify his conduct.

1.e. Section 13A of the e-QIP also required Applicant to, “List all of your employment activities, including unemployment and self-employment, beginning with the present and working back 10 years. The entire period must be accounted for without breaks.” Applicant described various periods of employment or unemployment from 2006 to March 2018, when he filled out Item 2. However, Applicant admitted that he failed to list self-employment as the owner and operator of a small business from at least the Summer of 2004 to at least September 2017. The record does not contain any further information about this employment, or any information that would explain or otherwise justify his failure to disclose this self-employment.

1.f. Applicant did not admit or deny this allegation in his Answer. His silence is viewed as a denial.

Section 26 of Item 2 asked Applicant questions about his financial situation within seven years of the date he filled out the form. Specific sub-sections of this section asked Applicant about debts that were charged off, in collection, or that involved repossessions. Applicant admitted in the e-QIP that he had one charged-off credit card account that he had resolved in 2017. He denied any other delinquencies. The SOR alleged that the debts set forth under subparagraphs 2.a, 2.h, and 2.i, below, fit the criteria of the questions and were intentionally omitted on the questionnaire. The nature of these debts is discussed below.

Paragraph 2 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations under this guideline.

The SOR alleged that Applicant has eight debts that are past due, charged-off, or in collection, in the total amount of approximately \$24,597. He also had a repossession of an airplane, and a garnishment in the amount of \$17,029. The existence and amount of these debts is supported by his admissions to all financial SOR allegations in his Answer and credit reports. dated May 16, 2018; December 17, 2018; October 21, 2019; and July 13, 2021. They are also confirmed by Applicant’s answers during an interview with an investigator from the Office of Personnel Management (OPM) held on September 9, 2018. (Items 5, 6, 7, 8, and 9.)

2.a. Applicant admitted owing a charged-off credit card account in the amount of \$16, 936. Applicant stated in Item 5 that he was in negotiations with the creditor to settle the account. The most recent credit report in the record shows this debt is still due and

owing. (Item 9.) This debt should have been admitted by Applicant on his e-QIP. This debt is not resolved.

2.b. Applicant admitted owing a charged-off account to a bank in the amount of \$3,702. The most recent credit report in the record shows this debt is still due and owing. (Item 9.) This debt is not resolved.

2.c. Applicant admitted owing a past-due debt in the amount of \$791. The most recent credit report in the record shows this debt has been paid and closed. (Item 9.) Accordingly, this allegation is found for Applicant.

2.d. Applicant admitted owing a past-due debt in the amount of \$362. The most recent credit report in the record shows that this debt is a paid charge off. (Item 9,) Accordingly, this allegation is found for Applicant.

2.e. Applicant admitted owing a past-due debt in the amount of \$923. The most recent credit report in the record shows that this debt has been transferred or sold. (Item 9,) There is no further information in the file. This debt is not resolved.

2.f. Applicant admitted owing a past-due debt in the amount of \$260. The most recent credit report in the record shows that this debt as a charge-off in the amount of \$1,355. (Item 9,) This debt is not resolved.

2.g. Applicant admitted owing a past-due debt to a cable company in the amount of \$237. The most recent credit report in the record shows that this debt has not been paid. (Item 9.) This debt is not resolved.

2.h. Applicant admitted being indebted to a telephone company for a debt placed in collection in the amount of \$1,386. Applicant stated to the OPM investigator that this was his son's debt and that Applicant was working on a settlement. (Item 5.) This debt appears on the credit report dated May 16, 2018, with an assignment date in April 2018. (Item 6.) Applicant's e-QIP was dated March 26, 2018. (Item 2.) Based on the state of the record it is unclear whether Applicant had sufficient knowledge of the state of this debt to require him to put it on his e-QIP. No information was submitted to show that this debt has been paid or otherwise resolved.

2.i. Applicant admitted that he had an airplane repossessed in 2017 due to his failure to make his monthly payments to a bank. No further information was submitted regarding this debt. This debt should have been admitted by Applicant on his e-QIP.

2.j. Applicant admitted having his wages garnished from his employer in June 2018 in the amount of \$17,029. No further information was submitted about this garnishment. This debt has not been resolved.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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 applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline E, Personal Conduct)

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying in this case:

(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; and

(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:

(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;

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

(4) evidence of significant misuse of Government or other employer's time or resources; 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.

Turning first to Applicant's employment with Company B. Applicant's admissions and the available evidence show that he had issues with this employment. These issues culminated in his decision to take "scrap" material from work without permission. Applicant was confronted by management about his action, admitted it, returned the material and was terminated. AG ¶ 16(c) applies to this conduct.

Next, with regard to Applicant's answers on his e-QIP, Item 2. Applicant admitted that he intentionally failed to inform the Government of his disciplinary issues at Company B. He also intentionally failed to inform the Government of his self-employment for over ten years. Finally, the debts set forth in SOR 2.a and 2.i should have been admitted on the questionnaire. AG ¶ 16(a) applies to this conduct.

The guideline includes three conditions in AG ¶ 17 that could mitigate the security concerns arising from Applicant's work-related misconduct and falsifications:

(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; and

(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.

Turning first to Applicant's work-related conduct. Applicant elected not to respond to the FORM, and the record does not have any explanations for the first two incidents. The third, for which he was terminated, involved Applicant removing items from his

employer without permission that he stated was “scrap.” The nature of the material is of no moment; it was the act that showed bad judgment for which no mitigation is provided. SOR allegations 1.a, 1.b. and 1.c are not mitigated.

Applicant has also not mitigated the significance of his 2018 falsification. Applicant did not provide accurate information about his employment, including self-employment, and did not inform the Government fully and truthfully concerning his financial situation. SOR allegations 1.d, 1.e, and 1.f are not mitigated. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has incurred over \$24,000 in past-due indebtedness over the past several years. He evidently paid two of the debts alleged in the SOR. (SOR allegations 2.c and 2.d.) However, the remainder of the debts are unresolved. He also did not submit any information concerning the repossession of an airplane or the current status of the garnishment of his wages. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s alleged financial difficulties:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(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.

The evidence does not establish that any of the above mitigating conditions apply to Applicant. He failed to submit any evidence that would tend to support any of them. There is no basis for me to find that Applicant has mitigated the security concerns arising from his financial situation. Paragraph 2 is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns over his considerable past-due indebtedness, his work-related conduct, and his falsifications on a Government questionnaire. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a through 2.b:	Against Applicant
Subparagraphs 2.c through 2.d:	For Applicant
Subparagraphs 2.e through 2.j:	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.

WILFORD H. ROSS
Administrative Judge