



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03605
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

09/06/2022

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**Decision**  
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CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 30, 2020. On October 15, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, J, and E. The DCSA CAF acted under Executive Order (Exec. Or.) 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Applicant responded to the SOR on October 21, 2021 and requested a decision based on the administrative (written) record, without a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The Government's written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on November 19, 2021. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM on December 7, 2021. He did not respond to the FORM, object to the Government's exhibits, or submit additional documentary evidence for my consideration. The case was assigned to me on April 22, 2022. Government Exhibits (GE) 2 through 10 are admitted into evidence without objection. GE 1 is the SOR and Applicant's Answer, which are already part of the record.

### **Findings of Fact**

Applicant is a 38-year-old information systems technologist, employed by a defense contractor since March 2019. He graduated from high school in 2002 and attended some college. He honorably served in the United States Navy from 2002 to 2016. While on active duty, he received non-judicial punishment (NJP) for driving under the influence (DUI) in 2012. He married in 2002 and separated in 2015, and has two children. He has previously held up to a top secret security clearance. His last clearance was suspended by the DCSA on December 23, 2020.

The SOR alleges under Guideline F, a \$5,828 debt owed to the Department of Veterans Affairs (VA) (SOR ¶ 1.a); two medical debts totaling \$3,808 (SOR ¶¶ 1.b and 1.c); and a small debt owed to a university (SOR ¶ 1.d). Under Guideline J, the SOR alleges Applicant was arrested in 2019 for assault with a deadly weapon and abandonment/neglect of children, and a subsequent restraining order was issued as a result (SOR ¶¶ 2.a and 2.b); an arrest in 2015 for corporal injury to spouse/cohabitant (SOR ¶ 1.c); an arrest and conviction (deferred prosecution) for DUI in 2012 (SOR ¶ 1.d); and a 2012 NJP while on active duty for the civilian arrest for the DUI (SOR ¶ 1.e).

Finally, under Guideline E (SOR ¶¶ 3.a - 3.d), the SOR alleges Applicant falsified his 2020 SCA by intentionally failing to disclose: the arrests alleged in SOR ¶¶ 2.c and 2.d, the delinquent federal debt alleged in SOR ¶ 1.a, and the remaining debts alleged in SOR ¶¶ 1.b – 1.d. Applicant admitted all of the SOR allegations in his Answer to the SOR without explanations, and the record evidence supports the SOR allegations.

In a personal subject interview (PSI) conducted by a Government investigator, Applicant explained that his felony arrest in 2019 was a result of heavy alcohol consumption late into the night, an argument with his girlfriend at the time, and a confrontation with her and her father. Applicant claimed that he was tackled from behind by her father, at which time he defended himself by punching the victim (father) once, causing a broken eye socket or cheekbone. (GE 3) However, in May 2021, Applicant pleaded no contest to a felony charge of inflicting corporal injury (presumably for the serious injury to his girlfriend's father), and an assault charge (presumably committed

against his girlfriend) was dismissed. He was sentenced to 45-days community labor, and placed on probation for four years, a period that would not end until 2025. As a result of these charges, Applicant was issued a restraining order in 2021 to stay away from the victims. (GEs 2, 3, 7, 8, 10) He did not provide information on his current probation status.

Applicant was also arrested in 2015 and charged with inflicting corporal injury on a spouse/cohabitant. Applicant claimed this arrest was a result of his efforts to prevent his girlfriend from driving after drinking, arguing, and her falling in the parking lot because she was intoxicated. He stated that the charge was dismissed after a court appearance. (GE 3) The record regarding the facts and reason for the dismissal is incomplete. In 2012, Applicant was arrested for driving under the influence and convicted of negligent driving pursuant to a deferred prosecution agreement. He admitted being over the legal limit. He was given a deferred prosecution but the offense resulted in disciplinary action by his Navy commanding officer at NJP. (GEs 3, 7, 8)

Applicant admitted the debts alleged in the SOR, and noted in his PSI that he entered into a debt relief program in 2016 or 2017 that resulted in several resolved debts. He noted that he intends to pay his VA debt that resulted when he dropped out of school after the VA paid his tuition. He believes his large hospital debt should have been paid by insurance and he intended to dispute it, but then he said he entered into a payment plan in July 2020 to resolve the debt. (GE 3)

Applicant has not supplied current information regarding the status of the claimed resolved and remaining SOR debts, or documentary evidence of his debt relief efforts. He noted in his PSI that he had used loans to pay off other loans, and it snowballed. He said that his debt relief company instructed him to stop paying on debts so they could negotiate settlements on his behalf. No documentary evidence was submitted showing the results of negotiations with creditors, payment progress or final resolution of any of the SOR debts. Applicant intends to pay all of his debts when able. In addition, partly because he admitted the Guideline E allegations without further comment, I find Applicant intentionally falsified his 2020 SCA by failing to disclose his 2015 arrest, his alcohol related offense, and his debts as required.

### **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

National security eligibility is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies

these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See, e.g., ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see, AG ¶ 1(d).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

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

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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 has a history of not responsibly meeting financial obligations. Although he stated that he is using a debt relief company, he has not shown the results of efforts to resolve the SOR debts. He stated his good intentions with regard to debt resolution, but good intentions are insufficient to establish mitigation, and he did not submit any documentary evidence showing the current status of his debts, his resolution efforts, or current financial status. The guideline encompasses concerns about a person's self-

control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period and that he can obtain and maintain a measure of financial responsibility. His financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. Overall, Applicant's financial responsibility is questionable. Although he is credited with employing a debt-relief company to resolve some of his debts, no documentary evidence was to show that these efforts were productive or successful. Therefore, no mitigation credit can be fully applied to the unresolved SOR debts.

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted or convicted, and
- (c) individual is currently on parole or probation.

Applicant's admissions, testimony, and the documentary evidence in the record concerning his involvement in a two domestic violence incidents, a DUI, and probation are sufficient to establish the disqualifying conditions above.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good

judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant has not provided sufficient evidence in mitigation. Given the totality of his involvement with law enforcement between 2012 and 2019, I continue to have concerns that this pattern of misconduct will continue as Applicant has not produced sufficient mitigating evidence that I can consider to conclude otherwise. I am not persuaded by the paucity of evidence in the record. It appears that Applicant remains on probation with a restraining order for a felony conviction in 2021 for a domestic violence related offense, a previous domestic violence charge that was ultimately dismissed for unknown reasons, and a DUI deferred prosecution with an NJP. Applicant downplays his involvement in each of the domestic-related incidents but did not provide documentary evidence to support his contentions. In both domestic violence instances, he essentially denied committing any physical acts against the victims except in self-defense, yet in at least one instance, he nonetheless pleaded no contest. My findings under Guideline E also negatively impact my view as to the credibility of his explanations.

I remain doubtful about Applicant's reliability, trustworthiness, or good judgment at this time. Insufficient time has passed without additional incidents, I have little evidence of restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement, and Applicant apparently remains on probation. No mitigation credit applies.

### **Guideline E: Personal Conduct**

The concern under this 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 or sensitive information.

The relevant disqualifying condition under AG ¶16 is:

(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.

Applicant's falsification of his 2021 SCA constitutes disqualifying conduct under Guideline E. Applicant admitted the SOR allegations in his Answer, and the documentary evidence supports the SOR. Disqualifying condition AG ¶ 16(a) applies.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

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

(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;

None of the mitigating conditions fully apply to Applicant's intentional falsifications of his 2020 SCA. He has had past experience with completing SCAs, and has not satisfactorily explained his admitted failure to report required information. The only criminal offenses he reported on the SCA were his pending 2019 felony charges. His 2015 domestic violence charge should have been reported as an arrest within seven years, and his DUI should have been reported as an alcohol related offense. In addition, his delinquent debts were required to be reported as a Federal debt and debts that are in a delinquent/collection status, but Applicant did not. I am not satisfied that sufficient time has passed, that the offense is minor, unique, or infrequent, or that Applicant has shown that this conduct is behind him and will not recur. Applicant admitted the SOR allegations and did not provide sufficient and persuasive evidence in mitigation. His behavior continues to cast doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

### **Whole-Person Concept**

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guidelines H, J, and E in my whole-person analysis. I considered Applicant's admissions, PSI, and interrogatory responses. Since he elected a decision without a hearing, I had no opportunity to view assess his credibility based on his demeanor and responses to inquiries. I am not convinced that Applicant is willing or able to permanently put his past misconduct aside and show good judgment in all areas of his life, especially those that are relevant to security eligibility.



Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national security interests of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F: Subparagraphs 1.a - 1.d:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline J: Subparagraphs 2.a - 2.e:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline E: Subparagraphs 3.a - 3.d:	AGAINST APPLICANT Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interest of the United States to grant or continue Applicant's eligibility for access to classified information. Applicant's security clearance is denied.

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Gregg A. Cervi  
Administrative Judge