



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



In the matter of:)	
)	
)	ISCR Case No. 21-01742
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline E, personal conduct, Guideline G, alcohol consumption, and Guideline J, criminal conduct. He failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On December 1, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, Guideline E, personal conduct, Guideline G, alcohol consumption, and Guideline J, criminal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

In an undated answer to the SOR, Applicant elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on April 27, 2022. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 9. (Item 1 is the SOR). Applicant did not respond to the FORM, provide documentary evidence, or object to the Government's evidence, and it is admitted. The case was assigned to me on August 4, 2022.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.f, and 2.a and 2.b. He denied the SOR allegations in SOR ¶¶ 3.a, 3.b and 4.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 28 years old. He is a high school graduate. He attended community college from January 2012 to May 2012. He attended another college from August 2014 to May 2017. He did not earn a degree. He acquired student loans to help fund his education. In his October 2020 security clearance application (SCA), he disclosed that he has worked for a federal contractor since May 2018 and also works part-time in another job since August 2020. Applicant is not married and has no children. (Item 3)

Section 26 of Applicant's October 2020 SCA asked if in the past seven years he had any debts turned over to a collection agency? He answered "No." The SOR alleges in ¶¶ 1.a through 1.f federal student loan accounts that were placed in collection. The alleged debts total approximately \$32,340. (Items 5, 6, 7)

Applicant was interviewed by a government investigator in March 2021. Applicant denied to the investigator having any delinquent federal debt or debts turned over to a collection agency in the last seven years. He was then confronted with his delinquent student loans that were in collection. He explained that he attended college and took out student loans. He said the creditors never contacted him and he never contacted the creditors. He said he called Credit Karma and his accounts were listed as closed. He took no further action at that point to repay the loans. He had not closed the accounts. He told the investigator that he had no reason for failing to repay the student loans. He had planned to go back to school, but never had the time. (Item 9)

In his answer to the SOR, Applicant admitted the delinquent student loans and said he had contacted the creditor and the debts were now consolidated. He stated that the creditor "gave me a monthly estimate of [\$]167/month, which can easily be done." He provided no documentary evidence to show he has an agreement with the creditor, that he started to make payments, or has taken any other action to resolve the debts. (Item 2)

Applicant denied that he deliberately failed to disclose his delinquent student loans on his SCA in response to section 26. He stated that he had an interview with a government investigator and said: "When I had the Zoom call [with] the investigator, she

alerted me. I told her I thought it had been handled, after it disappeared from my credit report. The student loans are the reason my credit score is as low as it is.” (Items 2, 9)

Applicant’s August 2020 credit report reflects the student loans alleged in the SOR are in a collection status. His credit report from January 2021 also reflects the student loans are in collection status and have been delinquent since about 2018. His March 2022 credit report shows each student loan as past due and in collection status. (Items 5, 6, 7)

Applicant told the investigator that his finances were fine and he was working two jobs. He did not have other delinquent debts. He did not list his student loans because they appeared as closed on his credit report. He lives within his means and will try and set up a payment plan for this student loans. (Item 9)

Applicant was arrested in August 2019 and charged with Driving While Intoxicated (DWI). He was arrested and charged in October 2019 for Contempt of Court: Failure to Appear. Applicant admitted he was arrested and charged with DWI and described the incident as an “outlier.” (Item 2) He said he went to driving school, paid the court fines, and had his license suspended for a year. Court documents reflect he also received a 90-day jail sentence that was suspended. (Item 8)

Applicant said it has been three years since the DWI offense and he has not had another incident. He denied he has a problem with alcohol and said that the DWI was a first offense. He said he disclosed the DWI to his security manager the day after it occurred. The Continuous Evaluation Report reflects on January 15, 2020, the DWI and failure to appear arrests were validated. He admitted he made a mistake and paid the price. (Items 4, 8)

Applicant denied that he was arrested for failing to appear in court and said it was a misunderstanding he had with his attorney. Court documents reflect that he was found guilty of failing to appear and was fined \$150 and court costs of \$87. (Item 8)

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 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, these guidelines are applied 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.” 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. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an 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 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 relating to the guideline 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has student loans totaling approximately \$32,000 that have been delinquent since about 2018. He has not made any payments on the loans. He stated that his finances are fine, he has two jobs, and lives within his means, yet he never contacted the student loan creditor to address his delinquent debts or made an effort until after he was interviewed by a government investigator. He has not provided evidence that he has made any payments. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 persons 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant attended college in 2012 and again in 2014 to 2017. He used student loans to fund his education. He never contacted the creditor to begin repaying his loans. It is unclear why he believed he was not responsible for repaying his \$32,340 student loan debt. He says he believed his accounts were closed. His three credit reports show each of his student loans are past-due and in collection status. He said he has since contacted the creditor to have the loans consolidated, and he can afford the monthly amount proposed. He failed to provide proof that he has begun repaying the loans. Applicant's failure to follow through and contact the creditors for his student loans when they became due casts doubt on his reliability, trustworthiness, and good judgment. There is no evidence his financial issues were beyond his control. He did not act responsibly in addressing his student loans when they were due. He said he has an affordable payment plan with the creditor, but provided no documentary evidence that he has implemented it and is paying his delinquent student loans. None of the above mitigating conditions apply.

Guideline G: Alcohol Consumption

AG ¶ 21 expresses the security concerns for alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes conditions that could raise security concerns and may be disqualifying. I find the following to be potentially applicable:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder.

In August 2019, Applicant was arrested and charged with DWI, 1st offense. He was found guilty of the offense. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from alcohol consumption. I have considered the following mitigating conditions under AG ¶ 23:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment; and

(b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

Applicant stated that this was his first offense and he has not had any alcohol-related incidents since then. He acknowledged it was an “outlier.” It appears this was an isolated incident and there is no other evidence that Applicant has an issue with alcohol. He admitted he made a mistake and paid a price. He completed the terms of his sentence, paid the fine and had his license revoked for a year. It has been three years since the offense with no other issues, and it is unlikely that similar conduct will recur in the future. I find the above mitigating conditions apply.

Guideline J: Criminal Conduct

The security concerns 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and 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; and

(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.

In 2019, Applicant was found guilty of DWI and failure to appear in court. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 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 was found guilty of DWI and failure to appear. He completed the terms of the DWI sentence and paid the fine for the failure to appear offense. He explained the failure to appear was a misunderstanding with his attorney. There is no other evidence of criminal conduct, and it appears this was an aberration. The same analysis under Guideline G, alcohol consumption applies to this guideline. The above mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

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 trustworthiness concern and may be disqualifying. I find the following 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 security clearance 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 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's convictions for DWI and failure to appear were cross alleged under the personal conduct guideline. I have considered the above disqualifying conditions and find that this conduct is explicitly covered under the criminal conduct guideline and AG ¶ 16(d) does not apply. However, AG ¶¶ 16(c) and 16(e) apply because his conduct when considered as a whole supports an assessment of questionable judgment and is the type of conduct that could impact his personal, professional and standing in the community.

Applicant failed to disclose his student loans on his SCA. Applicant stated that because he checked Credit Karma and believed his accounts were closed, he took no further action. Although grossly misguided, there is insufficient evidence to conclude that he deliberately failed to disclose his delinquent student loans on his SCA. Hence, AG ¶ 16(a) does not apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on 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.

Applicant's criminal conduct occurred in 2019 and he admits he made a mistake and paid a price. He has not been involved in any misconduct since then. The same analysis under the criminal conduct and alcohol consumption guidelines apply under the personal conduct guideline. The above mitigating conditions apply.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, G, J and E in my whole-person analysis.

Applicant attended college in 2012 and again in 2014 through 2017, and financed his education with student loans. He provided no evidence that he made any payments on his student loans when due. They have been in collection status since at least 2018. He made no effort to contact the creditor until after he was interviewed by a government investigator. Applicant indicated that a payment plan was proposed by the creditor that he could afford, but he provided no proof he has made any payments. He has not acted responsibly towards his debts. Applicant has failed to establish a reliable financial track record and failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations. He mitigated the security concerns under Guideline E, personal conduct, Guideline G, alcohol consumption, and Guideline J, criminal conduct.

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-1.f:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a-3.b:	For Applicant
Paragraph 4, Guideline G:	FOR APPLICANT
Subparagraph 4.a:	For Applicant
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Conclusion

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

Carol G. Ricciardello
Administrative Judge