



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 20-00104
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Brian Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

10/28/2022

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), E (Personal Conduct), and J (Criminal Conduct). Applicant refuted the allegations under Guideline J. He did not mitigate the concerns under Guidelines F and E. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on November 8, 2018. On April 28, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines E, F, and J. The DOD 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 adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on July 7, 2022. On July 8, 2022, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on July 14, 2022, and did not respond. The case was assigned to me on October 3, 2022.

The FORM Item 12 is a summary of a personal subject interview (PSI) conducted by a security investigator in April 2019. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. When the FORM was sent to Applicant in July 2022, Department Counsel informed him that he was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. I conclude that he waived any objections to the PSI summary by failing to respond to the FORM. "Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b, but denied the allegations in SOR ¶¶ 1.c-1.e, 2.a-2.e, 3.a, and 3.b. His admissions are incorporated in my findings of fact.

Applicant is a 46-year-old electrical engineer employed by a defense contractor since October 2018. He served on active duty in the U.S. Navy from October 1997 to October 2001 and received an honorable discharge. He has worked for defense contractors since August 2003, with short periods of unemployment when he was laid off in 2016 and 2017. He held a security clearance in the Navy, which was renewed in 2008. He earned an associate's degree in 2015 and has been enrolled in online college courses since 2015.

Applicant married in January 2001 and has four children, ages 29, 23, 19, and 17. During the PSI, the investigator asked him if he had any additional family members that he had not listed in his SCA. He volunteered that he did not list a twin brother, who is a transient moving around in the west coast of the United States, with whom he has no contact. He gave the investigator no specific explanation for not listing his twin brother. (FORM Item 12 at 5.)

Under Guideline F, the SOR alleges five delinquent debts. Applicant admitted the debts alleged in SOR ¶ 1.a (a debt charged off for \$20,594) and SOR ¶ 1.b (a debt charged off for \$10,127). He claimed that he had a payment plan for the debt alleged in SOR ¶ 1.a and that he was making payments on the debt alleged in SOR ¶ 1.b. He provided no documentation of a payment plan for the debt alleged in SOR ¶ 1.a, and the

documentation he submitted for the debt alleged in SOR ¶ 1.b reflects payments to a different account that was not alleged in the SOR.

In the PSI, Applicant was confronted with credit reports for six persons with names similar to his. He told the investigator that he had never used those names and could provide no information explaining why those names were associated with him. (FORM Item 12 at 1.)

Applicant answered “no” to all the financial questions in Section 26 of his SCA. In his answer to the SOR, he denied the two delinquent telecommunications accounts alleged in SOR ¶¶ 1.c and 1.d and the insurance company debt alleged in SOR ¶ 1.e, and he claimed that he had communicated his dispute to the alleged creditors.

During the PSI, Applicant was confronted with numerous debts. He admitted the debt alleged in SOR ¶ 1.a and told the investigator that he did not think he was required to list it in his SCA because he had contacted the creditor and discussed a payment plan. He told the investigator that he did not disclose the credit-card debt alleged in SOR ¶ 1.b because it was the result of fraud. According to Applicant, he had obtained this credit card for his spouse to use when he was deployed outside the United States. After an overseas deployment, he noticed numerous charges that he believed were fraudulent. He told the investigator that he disputed those charges and they were removed from the account. According to Applicant, the card issuer issued a new card and transferred about \$6,000 in undisputed charges to the new card, which was issued in his spouse’s name only and was paid in full. (FORM Item 12 at 7.)

The allegation in SOR ¶ 1.b was based on a credit report from December 2020 reflecting that the debt was opened in January 2015 and charged off in December 2020. (FORM Item 4 at 1.) In Applicant’s answer to the SOR, he responded to this allegation by submitting a document reflecting a payment on an account in his name only, with a different account number than the account listed in the December 2020 credit report, on which SOR ¶ 1.a was based. The documentation does not support Applicant’s claims in the PSI that the fraudulent account was closed, that a new account was opened in his spouse’s name only, and that it was paid in full.

In Applicant’s answer to the SOR, he denied having accounts with the creditors alleged in SOR ¶¶ 1.c, 1.d, and 1.e, and he stated that he had contacted the creditors and disputed the validity of the debts. In the PSI, he claimed that he had no knowledge of these debts. (FORM Item 12 at 6.) The debts alleged in SOR ¶¶ 1.c and 1.d are reflected in the July 2019 credit report (which is annotated with a fraud alert), but the insurance debt alleged in SOR ¶ 1.e is not reflected. (FORM Item 5.) The debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e are not reflected in the January 2021 credit report. (FORM Item 4.) They are too recent to have aged off the credit reports in accordance with the Fair Credit Report Act, indicating that Applicant’s dispute may have been resolved in his favor, especially in light of the identity fraud investigation discussed below.

Under Guideline J, the SOR alleges the following:

SOR ¶ 2a: That in July 2020, Applicant was charged with possession of controlled drugs and pleaded guilty to a lesser offense;

SOR ¶ 2.b: That on four occasions between August 2020 and June 2021, he was charged with possession of a controlled drug;

SOR ¶ 2.c: That on eight occasions between May 2020 and May 2021, he was charged with trespass not amounting to burglary;

SOR ¶ 2.d: That on five occasions between January 2019 and August 2021, he was charged with entering a state in western United States without registering with local law enforcement authorities; and

SOR ¶ 2.e: That he had engaged in banking transactions consistent with money laundering.

In Applicant's response to the SOR, he denied all these allegations. In February 2002, he filed an identity-theft complaint after receiving correspondence from the IRS about his income. His complaint was that someone was using his identify to apply for jobs. He filed another complaint in February 2008 after being notified by the IRS that his income was \$23,000 more than he had reported. In August 2009, he filed another complaint that his estranged twin brother was using his identify to obtain loans and other financial gains. In October 2011, he filed another complaint after his driver's license was "on hold" because another person had obtained a driver's license in his name in an adjoining state. The adjoining state determined that Applicant was a victim of identity fraud.

In August 2015, Applicant's employer obtained an investigation of his background from a civilian agency. The results of that investigation were attached to Applicant's answer to the SOR. The investigation showed that a person using Applicant's name had a long arrest and conviction record in two adjoining states in western United States. Applicant's estranged twin brother lives in one of those states. Applicant lives and works in southeast United States. In April 2019, Applicant supplied fingerprints to the FBI and asked for a criminal record check. The FBI found that he has no arrest data at the FBI.

### **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.

Eligibility for a security clearance 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 all available and reliable information about the person, past and present, favorable and unfavorable.

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. See *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 ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 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.

## 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. . . . 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 a person might knowingly compromise classified information to raise money. It 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).

The following disqualifying conditions under this guideline are relevant:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations. and

AG ¶ 19(g): unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that are inconsistent with known legal sources of income.

Applicant's admissions and the evidence in the FORM are sufficient to raise AG ¶¶ 19(a) and 19(c). AG ¶ 19(g) is not raised, because the evidence of money laundering was refuted by the evidence of identity theft.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. The debts alleged in the SOR are recent, numerous, and did not occur under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established for the debts alleged in SOR ¶¶ 1.a and 1.b, which Applicant admitted. It is established for the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e, which were the result of identity theft, a condition largely beyond Applicant's control.

AG ¶ 20(d) is not established. In Applicant's answer to the SOR, he claimed that he was making payments on the debt alleged in SOR ¶ 1.a. In the PSI, he claimed that he had contacted the creditor about a payment plan. He submitted no documentary evidence to support his claims. When an applicant claims that a debt is being resolved, he or she is expected to present documentary evidence supporting that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(e) is not established for the debts alleged in SOR ¶¶ 1.a and 1.b, which he admitted. It is established for the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.e, which he successfully disputed as fraudulent.

## **Guideline J, Criminal Conduct**

The concern under this guideline 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 following disqualifying conditions are relevant:

AG ¶ 31(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

AG ¶ 31(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.

Neither disqualifying condition is established. The evidence establishes that Applicant does not have a criminal record and that a person using his name in a geographical area where Applicant does not live or work committed all the offenses alleged in the SOR.

### **Guideline E, Personal Conduct**

The SOR alleges that Applicant falsified his SCA by deliberately failing to disclose the delinquent debts alleged in SOR ¶¶ 1.a through 1.e, and it cross-alleges the money laundering alleged in SOR ¶ 2.e.

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

The following disqualifying conditions under this guideline are relevant:

AG ¶ 16(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;.

AG ¶ 16(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 . . . a pattern of dishonesty or rule violations; and

AG ¶ 16(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 . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant is a mature adult who has completed the adjudication process at least twice during his career. He knew that the debts alleged in SOR ¶¶ 1.a and 1.b had been charged off. His claim that he was resolving the debt alleged in SOR ¶ 1.a is unsupported by documentary evidence. His claim that he was making payments on the debt alleged in SOR ¶ 1.b also is unsupported by documentary evidence. Instead, he submitted evidence of payments on another account that was not alleged in the SOR.

Based on all the evidence, I conclude that Applicant deliberately failed to disclose the delinquent debts alleged in SOR ¶¶ 1.a and 1.b, and that the disqualifying condition in AG ¶ 16(a) is established. The disqualifying conditions in AG ¶¶ 16(d) and 16(e) are not established, for the same reasons set out in the above discussions of Guidelines F and J.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

AG ¶ 17(a) is not established. Applicant did not attempt to correct the omission until he was confronted with the evidence during the PSI.

AG ¶ 17(c) is not established. Applicant's falsification is arguably infrequent, but it was recent and did not happen under unique circumstances. It was not minor, because falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

## Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F, J, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's honorable military service and long career as an employee of defense contractors. I have also considered the stressful circumstances he endured due to identify theft, apparently at the hands of his estranged twin brother. Because he requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about the allegations in the SOR. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guidelines F, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegations under Guideline J, but he has not mitigated the security concerns under Guidelines F and E.

## Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b: **Against Applicant**

Subparagraphs 1.c-1.e: **For Applicant**

Paragraph 2, Guideline J (Criminal Conduct): **FOR APPLICANT**

Subparagraphs 2.a-2.e: **For Applicant**

Paragraph 3, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant

**Conclusion**

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

LeRoy F. Foreman  
Administrative Judge