



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



In the matter of:)
)
) ISCR Case No. 19-03117
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

11/03/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Criminal conduct and personal conduct security concerns were not established. Eligibility for access to classified information is denied.

Statement of the Case

On December 16, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 31, 2020 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 18, 2022. Department Counsel amended the SOR on August 30, 2022, by adding an additional allegation under Guideline F, an allegation under Guideline J, criminal conduct, and an allegation under Guideline E, personal conduct. Applicant did not respond to the SOR amendment, but acknowledged receiving it on September 13, 2022.

The hearing was convened as scheduled on September 27, 2022. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. At Applicant's

request, I left the record open until October 14, 2022, for him to provide post-hearing documents to support his case. Applicant did not submit post-hearing documents and the record closed on October 14, 2022. I received the transcript (Tr.) of the hearing on October 4, 2022.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor for whom he has worked since December 2017. He was out of work from about June 2016 until September 2016 and from May 2017 until December 2017. Between January 2018 and July 2018 he attended online college classes, but did not earn a degree. He is twice divorced, and he remarried in February 2017. His previous marriages were from 2000 until 2010, and from 2010 until 2014. He has two stepchildren, ages 17 and 8. He also has three children, ages 11, 10, and 2. He served in the U.S. Army from 1997 until 2014, when he received an honorable discharge. (Tr. 24, 49; GE 1)

Under Guideline F, the Government alleged Applicant's three delinquent consumer debts totaling about \$42,000 (SOR ¶¶ 1.a through 1.c). In his SOR Answer, he denied the allegations in SOR ¶¶ 1.a and 1.b with additional comments. He did not respond to the allegation in SOR ¶ 1.c, so I have treated his lack of response as a denial. These allegations are established by the Government's evidence, including credit reports. (Tr. 25-47; Answer; GE 2-7)

Under Guideline J, the Government alleged Applicant's June 2022 arrest and charge of false report to a police officer (SOR ¶ 2.a). The Government cross alleged this allegation under Guideline E (SOR ¶ 3.a). He did not respond to the allegations in SOR ¶¶ 2.a and 3.a, so I have treated his lack of response as denials. (Tr. 47-66, 69-80; GE 7-10)

The delinquent auto loan in the amount of \$19,923 alleged in SOR ¶ 1.a has not been resolved. In his Answer, Applicant claimed this debt is fraudulent and has fallen off his credit report because of his claims about its validity. Applicant opened this account to purchase a vehicle in 2013. In 2015, he voluntarily surrendered the vehicle back to the dealership as he claimed he was having electrical problems with it. In 2015, he attempted to make payment arrangements with the creditor, but was unable to do so. He included this debt in a 2015 Chapter 13 bankruptcy petition that was dismissed that same year, so the debt was not discharged. This debt is listed in the 2018 credit report but not in any subsequent credit reports. (Tr. 25-35, Answer, GE 4, 5)

The delinquent personal loan in the amount of \$15,320 alleged in SOR ¶ 1.b has not been resolved. In his Answer, Applicant claimed this debt is fraudulent and has been disputed because of its "consistency and validity." He claimed that this creditor was known to unfairly target young service members, engaged in predatory lending practices, and is no longer in business. Applicant opened this account in 2013, and used it for every day purchases. He claims that he paid the balance on this account in full prior to his 2015 bankruptcy petition. However, he provided no documentary evidence regarding his payments or to substantiate the basis for his dispute. This debt

is listed in the 2018 credit report but not in any subsequent credit reports. (Tr. 35-41; Answer, GE 4)

The delinquent auto refinance loan in the amount of \$7,271 alleged in SOR ¶ 1.c has not been resolved. Applicant opened this account in July 2019 for a “refi cash out” on a vehicle he owned. Applicant’s first missed payment on this account was in August 2020 and the loan was charged off in September 2021. Applicant claimed that he was in contact with the creditor in July 2020. He claimed he was able to make payments on this account, but he no longer needed or wanted the vehicle, because he had purchased another vehicle. He wanted to return the vehicle in order to cancel the loan, but the creditor was not willing to accept his offer. In July 2020, he voluntarily surrendered the vehicle and tried to make payment arrangements on the account balance but was unable to come to an agreement with the creditor. He claimed that after the account was charged off, the account was moved to another creditor and he has been unable to locate that creditor in order to try to make payment arrangements. He claimed that he has been trying to contact them for the last month. This debt appears on the 2021 and 2022 credit reports. (Tr. 27, 41-47; GE 2, 6)

Applicant purchased a home in 2017. He earns \$62,000 annually. His take home pay is about \$2,250 every two weeks. He has a 100 percent disability rating with the Department of Veterans Affairs (VA) and receives \$5,500 in monthly benefits. He suffers from a brain injury that is combat related. His wife is a full-time student. He has two checking accounts with balances of \$10,000 and \$2,500. He claims that he has about \$4,500 left over at the end of the month after paying all his expenses. (Tr. 26, 41, 66-68)

In December 2021, Applicant’s spouse was involved in a traffic accident with another vehicle driven by an off-duty police officer. His spouse and three of his children were in the car and suffered minor injuries. His spouse called him immediately after the accident and he drove to the accident scene. When he arrived, he noticed that two of his children were bleeding and another was crying. Applicant was understandably upset. The driver of the other vehicle involved in the accident was taking pictures of the damage to both vehicles. In Applicant’s opinion, the other driver was too close to his vehicle and was unconcerned with the health of Applicant’s spouse and children. Applicant told the other driver to back away from Applicant’s vehicle and an argument ensued. At some point during this argument, the other driver told Applicant that he was an off-duty police officer and showed Applicant his badge. During the argument, the off-duty police officer put his hands on Applicant’s chest and his face, and knocked Applicant’s hat off his head. Applicant responded by knocking the off-duty police officer’s hat off his head. He and the off-duty police officer were then separated by bystanders. (Tr. 25-26, 46-56, 69-72; GE 7-10)

When on-duty police officers arrived at the scene of the accident, Applicant informed them that he wished to file a complaint against the off-duty police officer involved in the accident. The on-duty police officers directed Applicant to internal affairs (IA) and another unnamed police entity with oversight duties. He subsequently filed a complaint against the off-duty police officer with IA and the other unnamed police entity.

In January 2022, he met in-person with IA and provided information regarding his complaint against the off-duty police officer. At the beginning of the interview with IA, he let them know that he suffers from a brain injury and may not remember some details of the altercation. In March 2022, he met with IA again. At this meeting, the officers with IA told Applicant they were not able to substantiate the information he provided them and the other unnamed entity. IA also told him that the information he provided to IA and the unnamed entity was inconsistent. Applicant claimed IA did not tell him what these inconsistencies were. During this meeting with IA, he informed IA that he wished to drop his complaint against the off-duty police officer. He did not want to ruin the off-duty police officer's career, but simply wanted him reprimanded for his inappropriate behavior. (Tr. 56-66, 72-80; GE 7-10)

In June 2022, Applicant learned that he had a warrant out for his arrest for making a false report to a police officer. The warrant was filed in March 2022, but he did not know about it until a police officer with IA called him to tell him about it in June 2022. He drove to the police station and turned himself in. At the police station, he was arrested and charged with making a false report to a police officer. He was released on bond. As of the date of the hearing in this matter, these charges are still pending. He claimed that he does not know what information that he provided to either IA or the other unnamed police entity is considered false or untrue. He claimed that he provided IA and the other unnamed entity truthful information and denied filing a false report or engaging in any criminal activity or behavior. (Tr. 56-66, 72-80; GE 7-10)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has a history of financial delinquencies that includes delinquent automobile and personal loans. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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.

While he claimed to have paid the debt in SOR ¶ 1.b, Applicant provided no documentary evidence of payments or favorable resolution of any of the SOR debts. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. *See, e.g.,* ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). He therefore failed to show that he acted responsibly under the circumstances or that he made a good-faith effort to repay or otherwise resolve the SOR debts.

Applicant claimed that he disputed the debt in SOR ¶ 1.a because it was fraudulent. However, he did not provide a reason as to why the debt was fraudulent. Therefore, he has not provided sufficient evidence of a reasonable basis for his dispute of this debt. He also claimed that the debt in SOR ¶ 1.b was fraudulent. His general belief that this creditor engaged in predatory lending practices without providing evidence of fraud specific to his account does not constitute a reasonable basis to dispute the legitimacy of this debt.

Applicant relies on the disappearance of two of these debts (SOR ¶¶ 1.a and 1.b, both opened in 2013) from subsequent credit reports. However, there can be reasons other than a favorable resolution for debts to no longer appear on a credit report, and he has not provided evidence that these debts were favorably resolved. Applicant's

financial issues are ongoing and are, therefore, recent. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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. The following is potentially applicable:

(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.

While Applicant admitted being arrested in June 2022 for filing a false report to a police officer, he denied any criminal wrongdoing. He credibly testified that he told the truth when he filed his complaint against the off-duty police officer. There is no evidence in the record of what information Applicant provided that the police consider to be false or untruthful. Applicant has not been convicted of this or any other crime. The evidence in the record amounts to evidence of an arrest, but fails to provide evidence of criminal conduct. The Guideline J security concern is not established.

Guideline E, Personal Conduct

The security concern for personal conduct 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 the national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government representative;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(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:

(2) any disruptive, violent, or other inappropriate behavior.

Applicant credibly claimed that he told the truth when filing his complaint against the off-duty police officer. There is no evidence in the record as to what he told police that they believe is untrue. Therefore, his arrest (without conviction) does not support that he deliberately provided false or misleading information; nor does it support an 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. AG ¶¶ 16(b) and 16(c) are not raised. The conduct the Government alleged in SOR ¶ 3.a is explicitly covered under Guideline J. AG ¶ 16(d) is not applicable. The Guideline E security concern is not established.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) The nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have considered Applicant's military service and honorable discharge. I have incorporated my comments under Guidelines F, J, and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. While the Guideline J and E security concerns were not established, I conclude Applicant did not mitigate the financial considerations security concerns.

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.c:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge