



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



In the matter of: )  
)  
) ISCR Case No. 21-01170  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan J. Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

12/01/2022

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. He mitigated the drug involvement and substance misuse concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 1, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations, Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. The DCSA CAF acted 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 on June 8, 2017.

On July 12, 2021, Applicant answered the SOR and requested a hearing before an administrative judge. The scheduling of this hearing was delayed because of the

COVID-19 pandemic. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 1, 2022, and the hearing was convened as scheduled on July 21, 2022, using video teleconferencing capabilities. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified, but he did not offer any exhibits at the hearing. I held the record open until August 26, 2022, to allow Applicant to submit documentary evidence, but he failed to submit anything. DOHA received the hearing transcript (Tr.) on August 1, 2022.

### **Findings of Fact**

In his SOR answer, Applicant admitted all of the allegations, with explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 33-year-old employee of a federal contractor working as an aircraft electrician since March 2022. He holds an associate's degree and a certification. He is single, never married, and has no children. He was unemployed from October 2019 to February 2020, February 2015 to January 2016, and March 2013 to October 2013. (Tr. 4, 6, 24-25; GE 1)

Under Guideline F, the SOR alleged eight delinquent accounts (student loans, car debt, medical debt, and other consumer debts) totaling approximately \$54,119. The debts are established by credit reports from September 2020, April 2021, June 2021, and July 2022; Applicant's personal subject interview (PSI) with an investigator in October 2020; and his SOR response admissions (SOR ¶¶ 1.a – 1.h). (GE 3, 5-8; Answer to SOR)

Under Guideline H, the SOR alleged that Applicant used marijuana with varying frequency from about January 2011 to January 2017. This allegation is established by Applicant's admissions to an investigator during his October 2020 PSI, his admissions in his January 2021 security clearance application (SCA), and his admissions in his SOR response (SOR ¶ 2.a). (GE 2-3; Answer to SOR)

Under Guideline E, the SOR alleged that Applicant deliberately falsified material facts in his August 2020 SCA when he failed to list his marijuana use, as described in SOR ¶ 2.a, in Section 23 of the SCA. It also alleged that Applicant falsified material facts in his August 2020 and January 2021 SCAs when he failed to list his delinquent debts, as described in SOR ¶¶ 1.a – 1.h, in Section 26 of the SCAs. (SOR ¶¶ 3.a – 3.c)

### **Financial Considerations**

Applicant's financial difficulties began after he finished school and received his associate's degree and his certificate. He financed his education with student loans. He stated that at one time he had approximately \$140,000 worth of student-loan debt. All but approximately \$60,000 of it was forgiven because the school that funded the loans went out of business. He provided no corroboration for this assertion.

The history and current status of Applicant's student loans is as follows: His September 2020 credit report reflects that a national student-loan-servicing company was assigned Applicant's student loans in April 2015, with a balance of \$29,856. The date of last activity is listed as May 2018. The status of the loans is listed as "closed" and a "charged-off account." The credit report also reflects that the account was "purchased by another lender." His most recent credit report from July 2022 still shows the loans as charged off. This credit report also lists 15 other student loans in the name of a federal agency, with a total balance of approximately \$59,648. None of these loans show a "past due" characterization on the credit report. Applicant stated that these loans are currently deferred, although he was not sure of the reason for the deferment. Most likely, these student loans are deferred because of the Presidential Executive Order deferring all student-loan payments and interest accumulation because of the COVID-19 pandemic. There is no evidence linking the SOR listed charged-off student loans with the 15 currently deferred student loans. (Tr. 30-32, 48, 66; GE 5, 8)

Applicant claimed that the car debt list in SOR ¶ 1.c was erroneous because he held the title to the car. He did not produce documentation to corroborate that he possessed a free and clear title for the car. For all the remaining delinquent debts, Applicant claimed that he paid a debt repair company (DRC) approximately \$3,000 in August 2020. Once he hired the DRC, he believed it would "clean-up" his debt. He was advised by the DRC not to pay any of the debts so they would "drop off" his credit report. Aside from his one-time payment to the DRC, he has not made any payments toward his SOR debts. He stated that he would produce documentation showing his contractual arrangement with the DRC. He did not do so. SOR ¶¶ 1.a and 1.g are based upon the same underlying debt and therefore, I find for Applicant on SOR ¶ 1.g. (Tr.24, 29-30, 41-42, 63, 68-69-70; GE 5)

Applicant's annual salary is between \$50,000 and \$60,000. He does not have any savings currently. He is living in a recreational vehicle that his brother financed. He pays his brother \$800 per month to repay this loan. (Tr. 72, 74)

### **Drug Involvement and Substance Misuse**

Applicant admitted in his testimony that he used marijuana infrequently starting when his was about 22. He was not working for a federal contractor then. He knew it was illegal when he used it. He listed on his January 2021 SCA that he stopped using marijuana in 2017, but he does not really recall the date. On cross-examination, he stated that he had not used marijuana in the last two years. He understood that marijuana use is illegal under federal law and prohibited by federal contractor employees. His company does random drug testing and he was tested three times before he was hired.

### **Personal Conduct**

Applicant failed to list his marijuana use under Section 23 of his August 2020 SCA. He listed that activity when he completed his January 2021 SCA. He explained that the reason for his omission on his earlier SCA was because he was not at his home when he was completing it, and he did not have access to records that would have helped him

remember his activities seven years back. In between his first and second SCAs, he was interviewed by an investigator in October 2020 and failed to disclose his marijuana use between 2011 and 2017. When he completed the second SCA in January 2021, he was at his home location. He also contacted people at work and asked about this question, and he was told to list his marijuana use on the SCA. I did not find Applicant's explanation credible. (Tr. 33-35; GE 1-2)

Applicant also failed to list his delinquent debts on either of his SCAs when asked to do so in Section 26 of each one. Applicant explained that he did not list the debts on his SCAs because he had hired the DRC and believed his debts were being resolved. He admitted on cross-examination that he was asked about his debts and made aware of their delinquent status when he was interviewed by an investigator in October 2020. He claimed he had no intent to deceive the government about his debt status. I did not find Applicant's testimony credible. (Tr. 40-42, 61; GE 1-2)

### **Policies**

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 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an 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.

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**

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

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

Applicant incurred eight delinquent debts, including student loans, a car debt, and consumer debts. While Applicant was unable to pay the debts at certain times, he also hired a DRC and was advised not to pay certain debts so they would fall off his credit report. The evidence establishes that the SOR-related student loans were charged off in 2018, before the COVID-19 pandemic occurred. Although President Biden extended a pause on the collection of federal student loans due to COVID-19, thus creating a deferment period on federal student-loan payments, that action does not excuse

Applicant's previously delinquent student loans. (See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021)). I find that all of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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's debts are recent because they are ongoing and he has not made any payments toward them. His inaction towards resolving his debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's periods of unemployment are conditions beyond his control. However, his decision to follow the advice of the DRC and not pay his debts was a choice he made. Additionally, he did not act responsibly concerning his debts when he decided to follow that advice, and when he chose not to make payments on any of his debts. AG ¶ 20(b) is not fully applicable.

Applicant presented no evidence of financial counseling, other than hiring a DRC. Additionally, he stated that his plan to deal with his debts was to do nothing—in other words—he plans to let them fall off his credit report. While this may be an appropriate option to take viewed through a financial prism, it does not equate to acting responsibly and in good faith and puts into question his reliability, trustworthiness, and good judgment. Applicant's financial problems are not under control. AG ¶¶ 20(c) and 20(d) do not apply.

Applicant did not present documentary evidence to support his dispute of SOR ¶ 1.d. AG ¶ 20(e) does not apply.

### **Guideline H, Drug Involvement and Substance Misuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. One condition is potentially applicable in this case, to wit:

(a) any substance misuse.

Applicant used marijuana on several occasions from 2011 to 2017. I find AG ¶ 25(a) applies.

AG ¶ 26 provides conditions that could mitigate security concerns. One potentially apply in this case:

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

Applicant used marijuana on a limited basis and ceased using it in approximately 2017. He has not been involved with any drug activity since 2019. His years of abstinence, his understanding that marijuana use is illegal under federal law, and his willingness to abide by that is sufficient to demonstrate Applicant's intent not to use marijuana in the future. AG ¶ 26(a) applies.

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

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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.

I did not find Applicant's explanations for why he failed to list his prior drug involvement on his 2020 SCA or his delinquent debts on either of his SCAs credible. Reasonable inferences from the evidence support that he failed to list this information intentionally. AG ¶ 16(a) applies.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

(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.

Applicant did not make a prompt good-faith effort to correct his omissions. Providing false information on a SCA is not a minor offense, but rather goes to the heart of the security clearance review process. AG ¶¶ 17(a) and 17(c) do not 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F, H, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's periods of unemployment. However, I also considered that he did not attempt to pay his debts or take any other action to resolve his delinquent debts. He has not established a meaningful track record of debt management, and his plan to let his debts fall off his credit report causes me to question his reliability and willingness to resolve his debts in the future. While he mitigated his drug activity, his failure to list his drug use on his first SCA and his delinquent debts on both SCAs also raises questions about his reliability and trustworthiness.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations or personal conduct security concerns, but he mitigated the drug involvement and substance misuse 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.f, 1.h:	Against Applicant
Subparagraph: 1.g:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph: 2.a:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs: 3.a-3.c:	Against Applicant

## **Conclusion**

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

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Robert E. Coacher  
Administrative Judge