



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02644
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro se*

09/27/2022

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**Decision**

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Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. He mitigated the criminal conduct and personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 11, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. Applicant responded to the SOR on February 11, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on May 6, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 17, 2022. As of July 14, 2022, he had not responded. The case was assigned to me on September 8, 2022. The Government exhibits included in the FORM (Items 1-11) are admitted in evidence.

## Findings of Fact

Applicant is a 39-year-old employee of a defense contractor for whom he has worked since September 2017. He also worked additional part-time jobs during this time frame. He received a high school diploma in 2002. He has been married and divorced twice. His most recent divorce was in November 2019. He has three children of whom he holds joint custody. He had a stepson until his 2019 divorce. He served on active duty with the U.S. Navy from 2002 to August 2017 and received an honorable discharge. (Items 3, 4)

In the SOR, the Government alleged Applicant's two delinquent debts totaling about \$53,000 (SOR ¶¶ 1.a and 1.b). In his response to the SOR, Applicant admitted these debts with additional comment. The Guideline F SOR allegations are established through Applicant's admissions, his entries in his SF 86, and the credit reports produced by the Government. The home improvement loan in SOR ¶ 1.a appears in the 2020, 2021, and 2022 credit reports and reflects a last payment date of January 2019. The personal loan in SOR ¶ 1.b appears in the 2020, 2021, and 2022 credit reports and reflects a last payment date of December 2018. He provided no documentary evidence to show that either of these debts were paid, disputed, or otherwise resolved. (Items 1-6, 11)

Applicant attributed his financial problems to his most recent divorce and the financial burden of his child and spousal support payments. He claimed that he is paying about \$2,400 per month for child support, spousal support, and to repay benefits received from the state. He pays about \$160 per month for half of a \$2,500 personal loan that he and his ex-wife obtained prior to their divorce. He also attributed his financial problems to his and his latest ex-wife's poor financial planning and poor spending habits. Additionally, he claimed that damages to his home from a fire that were not covered by his homeowner's insurance caused him financial problems, most specifically with the debt listed in SOR ¶ 1.a. Applicant did not respond to the FORM, so more recent information about his finances is not available. (Items 1, 3, 4-6, 11)

In April 2018, Applicant was arrested at his home after a physical altercation with his 14-year-old stepson. The two argued about his stepson completing his chores and the argument turned physical. Applicant claimed that he hit his stepson in the shoulder and then wrestled him to the ground to subdue him. Applicant's stepson claimed that during the physical altercation, he was unable to breathe, but Applicant denied that he choked him. Applicant's spouse called the police. The police arrested Applicant, and charged him with felony risk of injury to a child, misdemeanor strangulation or suffocation in the third degree, and misdemeanor breach of peace in the second degree. He pleaded not guilty and was released, but was ordered to have no contact with his spouse and stepson. As a result of this incident, he attended mental health counseling from April 2018 until August 2018. The record is equivocal on whether he voluntarily attended counseling or it was court ordered. He also voluntarily took anger management therapy from June 2018 until September 2018. He claimed that as a result of attending this counseling, the aforementioned charges against him were dropped. He

also claimed that he pleaded *nolo contendere*, which is not consistent with the charges being dismissed. There is no independent documentary evidence in the record that verifies the disposition of this matter. (Items 3, 4, 7-10)

Applicant was arrested in April 2006 for domestic violence. He underwent anger management therapy for an unspecified period of time after this arrest. There is no additional evidence in the record regarding the disposition of this arrest. (Item 4)

In the SOR, the Government alleged Applicant's 2018 arrest, *nolo contendere* plea, and mental health counseling under Guideline J. The Government cross-alleged this allegation under Guideline E. Applicant admitted both these allegations but claimed that his counseling has helped him overcome the issues that led to the assault on his former stepson. He claimed he has avoided any criminal conduct and has made better decisions since his 2018 arrest and his subsequent counseling. (Items 1, 2, 4)

### **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 delinquent debts totaling about \$53,000. He has not made a payment on these debts in at least three years. The evidence is sufficient to raise the above disqualifying conditions.

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; and

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

Applicant's divorce and house fire were beyond his control. His poor spending habits and poor financial planning were not beyond his control.

There is no documentary evidence of payments to or payment arrangements with creditors for 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).

As there is no documentary evidence to show that the SOR debts were paid, disputed, or otherwise resolved, I cannot find that Applicant has acted responsibly under the circumstances. Likewise, I cannot find that he has made a good-faith effort to repay overdue creditors or otherwise resolve debts. He has not provided evidence to show that he has overcome the causes of his financial issues. Applicant's financial issues are ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial considerations security concerns are not mitigated.

### **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.

In April 2018, Applicant was arrested and charged with three criminal offenses, including a felony, for a physical altercation with his then 14-year-old stepson. Applicant

admitted striking and physically assaulting the victim. The above disqualifying condition is applicable.

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

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

(c) no reliable evidence to support that the individual committed the offense; 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.

It has been about four and one-half-years since Applicant engaged in criminal behavior. He underwent counseling for several months after the incident with his former stepson. He claimed that this counseling has helped alleviate the stressors that contributed to his criminal behavior. With the exception of being involved in another incident involving domestic violence about 16 years ago, he has not engaged in other criminal conduct. The significant amount of time that has elapsed since he has engaged in criminal behavior, in conjunction with his counseling and removal of the child from the home, is persuasive evidence of successful rehabilitation, that the criminal behavior is unlikely to recur, and that it no longer casts doubt on his reliability, trustworthiness, and good judgment. The criminal conduct security concerns are mitigated.

### **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 national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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.

The adverse information in SOR ¶ 3.a is not sufficient for an adverse determination under another Guideline and supports 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(c) is raised and Guideline E is established. The conduct the Government alleged in SOR ¶ 3.a is explicitly covered under Guideline J. AG ¶ 16(d) is not applicable.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(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.

For the reasons I included in my analysis of the Guideline J mitigating conditions, such as the passage of time without recurrence, and Applicant undergoing counseling, I conclude that the behavior alleged in SOR ¶ 3.a is unlikely to recur. For these same reasons, I find that this behavior no longer casts doubt on his reliability, trustworthiness, and good judgment. Personal conduct security concerns are mitigated.

## **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 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, J, and E in my whole-person analysis. I have also considered Applicant's military service and his honorable discharge.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not mitigate the financial considerations security concerns, but he did mitigate the criminal conduct and personal conduct 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.b:	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.

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Benjamin R. Dorsey  
Administrative Judge