



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXX	)	ISCR Case No. 22-00444
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

02/22/2023

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the national security concerns arising from his problematic financial history or his personal conduct. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on August 5, 2021. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on May 5, 2022, detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on May 25, 2022 (Answer), and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On August 4, 2022, Department Counsel submitted the Government’s

file of relevant material (FORM), including documents identified as Items 1 through 12. Applicant was sent the FORM on August 5, 2022, and he received the FORM on September 1, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted an undated response to the FORM (Response), and DOHA's receipt of that Response is also undated. Department Counsel did not object to the Response. The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in the case. Items 3 through 12 and the Response are admitted without objection. The case was assigned to me on November 17, 2022.

### **Findings of Fact**

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old, married (since October 1996), with an adult son and an adult daughter. He is a high school graduate. He served in the U.S. Air Force from February 1993 on active duty until he retired with an honorable discharge in March 2019 as a master sergeant. He held security clearances while on active duty. Since April 2018, he has been employed by a defense contractor. Before that, from November 2017 to April 2018, he worked as a contractor for or an employee of his current employer. (Items 3 through 5.)

### **Guideline F**

Under Guideline F, the SOR alleged that Applicant has six delinquent debts totaling \$24,980. (Item 1.) He denied those allegations and submitted a textual answer, the relevant parts of which are summarized below:

At the time you are referring to my family was going through a difficult medical crisis. My wife was diagnosed with breast cancer she was off work while we went to chemotherapy treatments at [facility]. She had to have a double mastectomy her recovery was slow and painful. My wife does our finances and opened these accounts to cover the lost *[sic]* of income. I was not aware of these accounts with her being out of work. During this time, I worked on taking her to appointments and getting the kids to school and going to work at my job where I worked for the 412<sup>th</sup> Communication Squadron, Edwards AFB CA . . . .

Any debts incurred will be taken care of since I am aware of them me and my wife have discussed them. I was not aware if any accounts were in a delinquent status since I did not handle the finances. So when I answered no on the Equip Questionnaire I was answering to my knowledge at that time. (Item 2.)

The six SOR debts remain delinquent. The SOR accounts were opened between May 1995 and August 2017. Other than the August 2017 account, the other SOR accounts were opened between 1995 and 2015. (Items 10-12.) Each of the SOR accounts were individual accounts opened in Applicant's name. The six SOR debts became delinquent between April 2017 and December 2017. The last payments on five of those six accounts were between December 2016 and April 2017. (Items 10 and 11.)

In an addendum to his interrogatory responses, Applicant explained his financial circumstances, which are summarized below:

In January 2017, his father-in-law died unexpectedly causing related expenses. In February 2017, his wife had surgery and developed complications that kept her out of work for eight weeks. In that same month, he retired from the Air Force and was working only two to three days a week. He did not receive disability payments until April 2018. Those events caused financial hardship for his family. (Item 5 at 12.)

During Applicant's October 12, 2022 Personal Subject Interview (PSI), he did not mention his father-in-law's death, his wife's surgery, or his delayed disability payments. (Item 5.)

In that same addendum, Applicant addressed the SOR debts as follows:

SOR ¶ 1.a is an account charged off for \$3,104. He contacted the creditor, and it is allowing him to make payments until paid in full. He produced no documents supporting that assertion. This debt is not resolved.

SOR ¶ 1.b is an account in collection for \$579. He is making payments of \$155 to pay off the account. He produced no documents supporting that assertion. This debt is not resolved.

SOR ¶ 1.c. is an account charged off for \$2,854. He has filed a dispute and is awaiting a response. He produced no documents supporting that assertion. This debt is not resolved.

SOR ¶ 1.d. is an account charged off for \$11,119. He did not respond to this allegation. This debt is not resolved.

SOR ¶ 1.e is an account charged off for \$3,165. He has filed a dispute and is awaiting a response. He produced no documents supporting that assertion. This debt is not resolved.

SOR ¶ 1.f is an account in collection for \$4,159. He has filed a dispute and is awaiting a response. He produced no documents supporting that assertion. This debt is not resolved. (Item 5 at 12.)

In sum, Applicant has not resolved the SOR debts.

As part of his interrogatory responses, Applicant submitted a Personal Financial Statement. His and his wife's total net monthly income was \$11,593. After deducting debt service, their net monthly remainder was \$5,692. (Item 5 at 11.) Applicant stated on two occasions that he was unaware of his finances, because his wife handled those matters. (Items 2 and 5.) He also said that he "does not need to make any financial changes to be able to pay off and stay up to date on his finances." (Item 5 at 6.)

### **Guideline E**

Under Guideline E, SOR ¶ 2.b alleged that in about April 2007 Applicant was charged with a felony violation of Uniform Code of Military Justice (UCMJ) Article 120 (Rape). (Item 1.) He denied that allegation. (Item 2.) SOR ¶ 2.c alleged that the May 2014 SCA asked whether he had EVER been charged with any felony offense, including under the UCMJ? (Emphasis in original.) In his May 2014 SCA, he answered "No," thereby deliberately falsifying that SCA. He denied that allegation. (Item 2.) He did not disclose the rape charge in his May 2014 SCA. (Item 4.)

SOR ¶ 2.d alleged that Applicant made the same deliberate falsifications to those questions in his August 2021 SCA. (Item 1.) He denied those allegations. (Item 2.) He did not disclose the rape charge in his August 2021 SCA. (Item 3.)

Under Guideline E, SOR ¶ 2.e alleged that Applicant deliberately failed to disclose in his August 2021 SCA those delinquent debts set forth in SOR ¶¶ 1.a through 1.f. (Item 1.) He denied those allegations. (Item 2.) He did not disclose those debts in his August 2021 SCA. (Item 3.)

In addition to his short denials of the Guideline E allegations, Applicant submitted a more detailed explanation, the pertinent part of which follows:

This is mostly to an oversight on my part, was not trying to deceive at all. I was charged in 2007 for an incident that happened back in 1997. It went to an Article 32 hearing where the accusations were proven false and all the charges were dismissed. So that was my fault not thinking, because I was on the list for deployment I asked if this would affect it from what I can recall my counsel telling me that since it was over and everything was dismissed it is like it never happened. So I was not trying to be untruthful. On the 2014 Equip questionnaire I answered no and did not get any questions back about this. Also when it was asked on the 2021 equip I was only going back 10 years since I figured that was what was needed for a Secret Clearance. So again I was not trying to be untruthful was just looking at the scope. . . . (Item 2.)

The record has a Charge Sheet showing that on April 16, 2007 Applicant was charged under UCMJ Article 120 with a rape that took place on February 19, 1999. (Item

8.) After an investigation, on May 8, 2007, that charge was dismissed due to credibility issues of the accuser. (Response at 1-8.)

In his Response to the FORM, Applicant provided a detailed explanation of the circumstances of the 1999 alleged rape. His explanation recounted graphic descriptions of the day and the evening in question. He specifically denied the accusations made by the accuser. He also provided details of exculpatory evidence. (Response at 9.)

### **Law and Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

### **Analysis**

#### **Guideline F, Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

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

individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

- (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's SOR debts are established by the Government's credit reports. Applicant stated that he would not need to make any "financial changes" to pay off his debts. And his Personal Financial Statement shows a healthy net monthly remainder (\$5,692). His Answer said that "any debts incurred will be taken care of." They have not been. AG ¶¶ 19(a), (b), and (c) apply.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from financial difficulties:

- (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.

Applicant's SOR accounts became delinquent in 2017. That is fairly long ago. But they remained in default at the time the SOR was issued. Also, those debts were not infrequent. Thus, AG ¶ 20(a) does not apply to mitigate those debts.

Mitigating factor AG ¶ 20(b) has two principal elements. First, there must be "conditions" "largely beyond the [applicant's] control" that caused the financial problem. Second. The applicant must have "acted responsibly" under the adverse circumstances he confronted.

Year 2017 presented Applicant with a number of challenging circumstances. His father-in-law died unexpectedly in January. In February, his wife underwent surgery that caused her to miss work for two months. And his disability checks were delayed until April 2018. Those events caused financial hardship. They were "largely beyond" Applicant's control, thus satisfying the first element of AG ¶ 20(b).

The next inquiry is whether Applicant acted responsibly under those adverse circumstances. In this case, he used credit cards to "cover the lost [*sic*] of income." That is consistent with the credit reports showing the SOR accounts becoming delinquent in 2017. By way of context, after her surgery, his spouse resumed work in about mid-2017. In 2018, he worked full time as a contractor or as an employee for his current employer. As noted, he began receiving disability payments in April 2018. Aside from making one payment on one SOR account in August 2021, he has made no payments to the other SOR accounts since 2016 or 2017. They apparently have been ignored. That is not responsible conduct. The second element of AG ¶ 20(b) is not satisfied. Applicant's SOR debts are not mitigated under AG ¶ 20(b).

Applicant stated that he is making or plans to make payments to the creditors of SOR ¶¶ 1.a and b. He has not, however, provided any documents supporting that assertion. The Appeals Board has routinely held that it is reasonable to expect applicants to produce documentation supporting their efforts to resolve debts. *See, e.g.,* ISCR Case No. 20-00615 at 2 (Jun. 7, 2021). Applicant has not satisfied that basic requirement. Therefore, mitigating condition AG ¶ 20(d) does not apply.

Applicant stated that he has disputed SOR ¶¶ 1. c, e, and f. Mitigating condition AG ¶ 20(e) requires "documented proof" to "substantiate the basis of the dispute" or "evidence of actions to resolve the issue." He has provided neither. AG ¶ 20 (e) does not apply.

None of Applicant's SOR debts have been resolved or mitigated. I find against Applicant on SOR ¶ 1.

### **Guideline E - Personal Conduct**

In assessing an allegation of deliberate falsification, I consider not only the allegation and applicant's answer but all relevant circumstances. AG ¶¶ 2(a) and (d)(1)-

(9) (explaining the “whole-person” concept and factors). Under Guideline E for personal conduct, the concern is that “[c]onduct 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.” A statement or omission is false or dishonest when it is made deliberately (knowingly and willfully).

In this case, the SOR alleged that Applicant falsified facts by failing to disclose the 2007 rape charge in his May 2014 SCA and his August 2021 SCA. He denied those allegations. The record, however, proves the truth of those allegations. He was charged with rape on April 16, 2007. This conduct falls squarely within AG ¶ 16(a), which states in pertinent part:

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations.

AG ¶ 17(a) states in pertinent part a mitigating condition that may mitigate that disqualifying condition:

[The] individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

Applicant failed to disclose the 2007 rape charge in his May 2014 SCA and in his August 2021 SCA. This proceeding is not to revisit the legitimacy of the rape charge. It was thoroughly Investigated by the Air Force, and the charge was dismissed. The issue here is whether he deliberately omitted that charge from two SCAs.

Applicant is correct that the charge was made when he was young and newly-married. A charge of felony rape, however, is momentous at any age. The three-week investigation before it was dismissed surely was personally distressful for him. But that episode was only seven years before he needed to complete his May 2014 SCA. That he asked a lawyer about answering “No” shows he had misgivings about that answer.

When he completed the 2014 SCA and the 2021 SCA, he had over 20 years of experience as an airman. He had held security clearances before. Moreover, the SCA question asked whether applicant had EVER been charged with a felony (emphasis added)? That use of UPPER CASE letters is intended to call attention that the question goes back EVER in time. Finally, perhaps the most telling evidence is the great level of detail about the rape incident that he included in his Response to the FORM. These many years later, that incident is still quite fresh in his memory. That is understandable, but it should have been disclosed in his 2014 SCA.

Having omitted the rape charge from his 2014 SCA, Applicant was presented with an opportunity to correct that omission when he needed to complete the 2021 SCA. He did not, however, use that opportunity to correct his 2014 omission. Instead, he omitted



the rape charge from the 2021 SCA, as well. I find that he deliberately omitted the rape charge from his 2014 and 2021 SCAs.

AG ¶ 17(a) does not apply. I find against Applicant on SOR ¶¶ 2 a.-d.

SOR ¶ 2.e alleged that Applicant falsified facts by failing to disclose the delinquent debts alleged in SOR ¶¶ 1.a through 1.f in his 2014 and 2021 SCAs. He denied those allegations. The record shows, however, that he did not disclose those debts in those two SCAs. The question is whether that omission was deliberate. During the investigation, he repeatedly denied having significant knowledge about his family finances. According to him, his wife handled the family finances. That custom was interrupted in February 2017 when his wife had surgery, and he took over that chore while she recuperated. Applicant's interrogatory responses show that even at this late date, his family finances are still not under control. I attribute that, however, to carelessness or negligence, not to a deliberate omission of the SOR debts. I find in favor of Applicant on SOR ¶ 2.e.

### **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 Guideline F and Guideline E in my whole-person analysis.

Under AG ¶ 2(a), 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 and the whole-person concept.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For those reasons, I conclude that Applicant has not mitigated the security

concerns arising under Guideline F, financial considerations, and Guideline E, personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a.-f.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-d.:	Against Applicant
Subparagraph 2.e.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Philip J. Katauskas  
Administrative Judge