



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00104
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gatha Manns, Esq., Department Counsel  
 For Applicant: Brittany Forrester, Esq.  
 03/03/2023

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the Guideline F (Financial Considerations) and Guideline E (Personal Conduct) security concerns. Eligibility for access to classified information is denied.

**History of Case**

Applicant submitted a security clearance application (SCA) on August 15, 2017. On December 3, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. Applicant answered the SOR on December 16, 2021, and he requested a hearing before an administrative judge (Answer). On March 1, 2022, Department Counsel was ready to proceed, and the case was assigned to me on March 13, 2022. On April 15, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 18, 2022. The hearing was held as scheduled, via video teleconference on Microsoft Teams.

At the hearing, I marked the April 14, 2022 case management order as Hearing Exhibit (HE) I; Department Counsel’s exhibit list as HE II; Department Counsel’s March 1, 2022 discovery letter as HE III; and Applicant’s exhibit list as HE IV. Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A through F were admitted without

objection, and Applicant testified. I received the transcript (Tr.) on June 1, 2021. The record was held open until May 25, 2022, to allow Applicant to submit additional documentation. He timely submitted AE G and I, which were admitted without objection. I marked Applicant's supplemental exhibit list as HE V, and the record closed.

### **Amendment to the SOR**

At the hearing, pursuant to Paragraph 17 of the Additional Procedure Guidance of the Directive, Department Counsel moved to amend SOR ¶ 2.a to state:

“a. That information set forth in subparagraphs 1.d. through 1.e., above.”

Applicant did not object to the SOR amendment, and I granted Department Counsel's motion. (Tr. 8)

### **Findings of Fact**

Applicant is 30 years old. He married in 2012, has been separated since approximately 2016, and was in the process of a divorce as of the date of the hearing. He has been with his current partner since approximately 2016. He has three children, ages 9, 6, and 5; his two eldest children are from his first marriage and his youngest child is from his current relationship. In 2021, he received a Bachelor of Science in business administration. He enlisted in the United States Navy in May 2012 and was discharged in April 2016, with a general discharge under honorable conditions. He has been the facility security officer (FSO) and information system security officer for his current employer, a DOD contractor, since October 2021. He has held a secret security clearance since approximately 2012 and is applying for an upgrade to a top-secret security clearance. (GE 1-3; AE E; AE F; Tr. 7-8, 17-19, 38, 62-63, 65, 76-77, 92)

The SOR alleged that Applicant has three delinquent debts totaling \$26,045, and he admitted these financial allegations. Additionally, the SOR alleged that he was arrested in May 2008, charged with shoplifting, larceny, and theft, and placed in a diversion program, which he denied. He admitted to being convicted at a Navy court martial in 2016 for his involvement in a bank fraud scheme in 2013. Finally, he admitted that he was terminated from employment in May 2018 for time-card fraud.

Applicant testified that his financial problems were the result of a six-month period of unemployment after he was abruptly discharged from the Navy in 2016, following his court martial. During that period, he received bi-weekly unemployment benefits of \$900. He spent half of that on his rent in State A, where he had been discharged, and half on his wife's rent in State B, where she lived. Additionally, his Navy rating or job did not translate well into the civilian job market, making it difficult for him to find employment. He was also unemployed from April to June 2017; May 2018 to January 2019, following his termination mentioned above; and April 2021 to October 2021. He owed the Internal

Revenue Service (IRS) approximately \$10,000 for tax year 2017, for failing to pay taxes on his unemployment benefits. He repaid this debt in 2020 and 2021, which affected his ability to repay his other delinquent obligations. He also testified that his divorce attorney cost him \$3,500, and his attorney for the DOHA hearing cost him \$4,000, limiting his ability to repay his delinquent debts. (GE 1-3; Tr. 20-22, 40-43, 51-52, 57-60, 63, 78-79, 90)

**SOR ¶ 1.a.** Applicant purchased a vehicle in 2012 for \$16,753. The monthly payments were \$309, and he was unable to make payments after he was discharged from the Navy. The vehicle was involuntarily repossessed. According to his 2020 credit bureau report (CBR), the outstanding balance on the loan was \$10,398, as alleged in the SOR. In his 2017 SCA, he indicated he was “working towards paying back” this debt. He told the government investigator in January 2019, that his intent was to repay this debt and he was working to repay it. At hearing, he admitted that he does not know what his intent is regarding this debt. Initially, he was planning to wait for the seven-year statute of limitations to expire. His last contact with the creditor was in 2016, when the vehicle was repossessed. His March 2022 CBR reflects that this debt was charged off in the amount of \$7,079. (GE 1; GE 3 at 8; GE 4 at 3; GE 5 at 2; GE 6 at 8; Tr. 20-22, 79-80)

**SOR ¶ 1.b.** This was a \$4,635 personal loan that Applicant opened and used to cover his expenses while he was unemployed following his court-martial and subsequent discharge from the Navy. The creditor sent him a letter shortly before the hearing that it was willing to settle the account. Following the hearing, he provided proof that he paid and settled the account for \$2,155.40. (GE 5 at 3; GE 6 at 7; AE A; AE G; AE H; Tr. 22-23, 81)

**SOR ¶ 1.c.** Applicant purchased a vehicle for his wife in October 2015, in the amount of \$16,720. He was unable to continue to make the \$365 monthly payments when he was discharged from the Navy, and it was repossessed. According to his 2020 CBR, the outstanding balance on the loan is \$11,011. This debt does not appear in his 2022 CBR. (GE 3 at 8; GE 4 at 7; GE 5 at 2; Tr. 23, 82-83)

At the hearing, Applicant testified that he was essentially waiting for his older delinquent debts to fall off of his CBRs. “Like if it was left to me, if I’m being honest, I would wait it out because of the fact that it’s no longer hitting my clearance. [I]t has to have been close to seven years and I would wait it out.” In 2019, Applicant spoke to his mother’s friend, a financial advisor (FA), at a family barbecue regarding the repayment of the debts alleged in the SOR. He did not hire FA as his advisor. FA recommended to Applicant that he wait out the seven-year statute of limitations for his debts. (Tr. 63-64; AE A)

In May 2022, just prior to the hearing, Applicant retained a credit counseling service (CCS), and the company helped him create a budget, but due to his pending divorce, he was unable to follow it. Applicant’s starting salary at his current company was

\$95,000, and he currently earns \$109,000 annually. His partner earns \$26 an hour and works 36 hours a week. The budget created by CCS does not include his partner's income, and it indicates that he has a net monthly remainder of \$3,148. He does not pay any money in child support for his children, nor is he required to pay alimony to his soon-to-be ex-wife. (AE B-C; Tr. 31-34, 53-54, 62, 72, 77, 84-86, 91)

**SOR ¶ 1.d.** In 2008, Applicant was arrested and charged with shoplifting, larceny and theft and consequently placed in a diversion program. He disclosed this incident in his 2012 SCA. In his Answer, he denied this allegation and indicated that he did not remember the incident. At the hearing, he again stated that he could not recall the underlying behavior or incident. (GE 2; GE 4; Tr. 25, 67-68)

**SOR ¶ 1.e.** In 2016, Applicant was convicted at a court martial of attempts, conspiracy, and soliciting another to commit an offense for his role in a bank fraud scheme. He was sentenced to 30 days in the brig. He admitted this allegation.

Applicant told the government investigator during his January 2019 interview, which he later adopted, without changes, that he received a Facebook message from a man that he did not know. The man told Applicant that he did credit card fraud. Applicant responded that he was straight; however, Applicant was from City X; therefore, "he knew what the deal was." Applicant told two of his Navy friends about the offer, and they were interested. He then recontacted the man from Facebook and told him that his friends were interested. When Applicant went home to City X, he gave the Facebook man his friends' debit cards, and that was the extent of his involvement. A couple of days later, Applicant's debit card stopped working. When he called his bank, he was transferred to the fraud department, and he learned that he was involved with his friends' cards being involved in a fraud case. (GE 3 at 6)

At a May 2019 follow-up interview with a government investigator, Applicant told the investigator that the man from Facebook was someone he knew from high school. He also disclosed that he was aware that the individuals above were going to commit bank fraud, he also indicated that he took cards belonging to six individuals to City X to give to his high school friend. (GE 3 at 14)

In Applicant's Answer, he wrote, "Someone from high school...reached out to me. He told us that he generates check and that he could name some in our name to deposit them. [B]ack then, neither of us had no clue what we were in for."

At the hearing, Applicant testified that during his first year in the Navy, a friend from high school contacted him and told him that he could generate checks for Applicant to deposit into Applicant's bank account. Applicant told his friends about it, and they decided to do it with him. They all gave Applicant's friend their "card" and online bank information.

He said, 'Give me your cards and online info. What I'll do is -- I make checks. I'll deposit a check.' And then we take it out or he'll take it out because he has the cards. He'll take it out and then he'll take his cut and leave my cut on and send my cards -- send our cards back. [T]hat was the deal. (Tr. 70)

According to Applicant, he backed out, because "it seemed a little fishy -- suspicious..., meaning I called [my bank] kind of cancelled my card and everything. But even ... with doing that -- even with backing out, the Court felt like -- well, not the Court, Naval Criminal Investigative Service felt like it was still on me because if it wasn't for me, no one would have been doing which was correct. Which is why I chose to -- pled guilty to solicitation because I did tell my friends about it." The underlying conduct occurred in 2013, but the sentencing and plea was in 2016. He is unaware of what the consequences were for the other sailors who were involved in this criminal enterprise. (GE 1-3; Tr. 25-27, 69-71, 83-84)

**SOR ¶ 2.b.** In May 2018, Applicant was terminated from his employment for time-card fraud. At that time, he was working for a defense contractor. He was initially hired as a data management specialist (DMS), but in August 2017, he started filling in for the FSO who was on maternity leave. At that time, he was interested in obtaining a full-time FSO position. He told the government investigator during his January 2019 interview that he was fired for timesheet issues and attendance. He was logging more hours than he was actually working in May 2018. He told the investigator that an example of this behavior was that he would schedule an email to be sent to his manager two hours before leaving, because he did not feel like walking back upstairs to his desk, but he disputed showing up late for work. (GE 3 at 5)

In May 2019, Applicant was re-interviewed by a government investigator regarding the reasons for his termination in May 2018. The investigator confronted Applicant multiple times with developed information from the investigation regarding the issue of his time sheets. He admitted to the investigator that his behavior of not reporting his time accurately was intentional. (GE 3 at 13-14)

Applicant testified that he started showing up late to work and leaving early, as he was attending night classes. As a result, his then-employer gave him a verbal warning. According to him, he was told that he was not supposed to be logging his hours as both the DMS and FSO, but he was not aware of this requirement and made an "honest mistake." (Answer; GE 3 at 5, 13; GE 7; Tr. 28-31, 48-49, 77-78)

Applicant's former employer reported in a Defense Information System for Security (DSS) report that Applicant had,

been sending false emails to his manager stating he was at work when he was not. Because of his previous attendance issues, [Applicant] was required to email his manager when he arrived and departed for the day. Last week his manager went to ask him a question and he [had] already left for the day, when she returned to her desk she received an email stating he was now leaving for the day. [Applicant] was let go on May 1<sup>st</sup> 2018 at 2pm, later that afternoon his manager received an email stating he was leaving for the day, she then received an email the next morning May 2<sup>nd</sup> 2018 stating that he had just arrived to work, even though he was terminated the day before.

Applicant provided two letters of recommendation. He is described as having a strong work ethic and performing his duties well. According to his current employer, he has fully disclosed his past misconduct and regrets his prior poor decisions. “[Applicant] is capable of handling and managing any situation with thoughtfulness and maturity to achieve the right decision.” (AE D; AE I; Tr. 35)

### **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 AG ¶ 2, describing 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.”

According to 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 clearance 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**

AG ¶ 18 expresses the security concern pertaining to 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 . . . .

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.

The record evidence of Applicant's delinquent debts and his 2016 conviction establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other international financial breaches of trust.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 or provides evidence or actions to resolve the issue.

Applicant's arrest in 2008 is mitigated by the passage of time. Additionally, the underlying financial concerns raised by the 2013 behavior alleged in SOR ¶ 1.e is mitigated by the passage of time. However, his failure to be forthright regarding this incident throughout the adjudication of his clearance is a separate concern that I will address below under Guideline E.

Applicant has approximately \$20,000 in delinquent debt. He experienced several periods of unemployment, but two of these periods were due to his own misconduct. He also has been going through a divorce, which has cost him at least \$3,500 in attorney's



fees. However, he has no child support or alimony obligations impacting his ability to repay his debts. He sought credit counseling approximately one week before the hearing, and at the time of the hearing, did not have the financial resources to follow the budget created by the service. He has failed to demonstrate that there are clear indications his financial problems are being resolved.

SOR ¶¶ 1.a and 1.c do not appear on his most recent CBR; however, Applicant has not provided corroborating documentation to show debt resolution. The record is absent of any evidence of his efforts to resolve his debts or prove that the outstanding debts are not his responsibility. Accordingly, there is insufficient evidence that he has acted responsibly to resolve his financial issues. He settled the debt alleged in SOR ¶ 1.b for less than half of the alleged amount. However, he resolved this debt following the hearing; therefore, he receives only partial mitigating credit, as his actions do not reflect a timely and good-faith effort to repay or resolve his debts. Additionally, he has indicated that he is unsure if he will repay the remaining alleged debts.

Applicant's failure to resolve his debts indicates his financial issues are an ongoing and continuing concern. Therefore, his behavior continues to cast doubt on his reliability, trustworthiness, and judgment. For the forgoing reasons, Applicant failed to establish mitigation under AG ¶ 20.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes the following condition that raises a security concern and is disqualifying in this case:

(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:

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant engaged in deceptive behavior while holding a security clearance. This behavior occurred when he served on active duty in the Navy and while he was working as a FSO for a DOD contractor. As a result of his conduct, he was convicted of a crime and ultimately discharged from the Navy with a less than honorable discharge in 2016. Two years later, he was terminated by his employer for time-card fraud.

AG ¶ 17 provides conditions that could mitigate security concerns raised under this guideline. Four of those conditions are potentially applicable:

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

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

At the hearing, Applicant minimized his culpability for his behavior related to the 2013 bank-fraud scheme and his 2018 firing for time-card fraud. He provided a version of events for both incidents in his January 2019 interview with a government investigator. In

March 2019, he was re-interviewed and confronted with additional facts and his version of events changed for both incidents. He later adopted these statements with no changes.

In his Answer and at the hearing, Applicant minimized his culpability and knowledge regarding the bank-fraud scheme, leading me to question his veracity. He also minimized his behavior leading up to his 2018 firing. All of this is indicative of an individual who has not taken positive steps to change his behavior or demonstrate the behavior is unlikely to recur. Based upon his inability to be forthright, I have ongoing doubt regarding his reliability, trustworthiness, and judgment. Mitigation was not established under AG ¶¶ 17.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. 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 the guidelines at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). I considered Applicant's letters of recommendation, his credit counseling, and other documentary evidence. Based upon his testimony, and his inconsistent statements to investigators in 2019, he continues to behave in ways that demonstrate a lack of trustworthiness and reliability. After weighing the disqualifying and mitigating conditions under Guidelines F and E and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the security concerns at issue. Accordingly, he has not carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F:  
Subparagraph 1.a:

AGAINST APPLICANT  
Against Applicant

Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant regarding SOR ¶ 1.d Against Applicant regarding SOR ¶ 1.e
Subparagraph 2.b:	Against Applicant

**Conclusion**

I conclude that it is not clearly consistent to continue Applicant's national security eligibility for access to classified information. Clearance is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge