



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



In the matter of: )  
)  
) ISCR Case No. 21-02466  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeff Nagel, Esquire, Department Counsel

For Applicant:  
Christopher Snowden, Esquire

March 29, 2023  
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**Decision**

\_\_\_\_\_

GLENDON, John Bayard, Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on January 5, 2021. On June 14, 2022, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and J (Criminal Conduct). The action was taken under Executive Order 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 within the DoD after June 8, 2017.

Applicant answered the SOR in writing (Answer) on July 5, 2022 and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on August 25, 2022. DOHA assigned the case to me on September 6, 2022. The hearing was initially scheduled for December 1, 2022. Applicant wrote that he felt unable to represent himself and was working away from home. I granted him a continuance while he sought legal representation. He retained counsel, and DOHA issued a Notice of Video Teleconference Hearing on December 9, 2022, rescheduling the hearing on January 23, 2023. The case was heard as rescheduled.

The Government offered Government Exhibits (GE) 1 through 11, which were admitted without objection. Applicant testified on his own behalf and introduced two exhibits, marked as Applicant Exhibits (AE) A and B and admitted without objection. Applicant's attorney requested that I keep the record open to provide him with the opportunity to submit additional documentation, and I did so. On February 3, 2023, his office timely submitted six exhibits marked as AE C through H, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 30, 2023. (Tr. at 11-13, 30.)

### **Findings of Fact**

Applicant is 50 years old and has married twice, first in 1991 and again in 2018. His first marriage ended in divorce in 2009. He has four children with his first wife and one child and a stepchild with his second wife. His second wife, their child, and his stepchild live in Mexico, and Applicant visits them when he is not working remotely on assignments. He earned a bachelor's degree in 2006 and a master's degree in business administration in 2009. Applicant has held a security clearance in the past. Most recently, he was granted a security clearance in 2009. He was badly injured in a car accident in late 2006 and became disabled. He was unable to work full time again until 2017, and he collected social security disability benefits during his period of unemployment. Since about October 2021 he has worked as a technician for his current employer, a DoD contractor. He is seeking national security eligibility in relation to his employment. (Tr. at 6-7, 15-22, 46-47; GE 1 at Sections 2, 13A, 13B, 17; and AE A at 1.)

### **Paragraph 1 - Guideline F, Financial Considerations**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. The SOR identifies 12 past-due debts that have been charged-off or placed for collection, totaling about \$120,000 (SOR ¶¶ 1.a through 1.l). In his Answer, Applicant admitted seven SOR allegations involving delinquent student loans (SOR ¶¶ 1.a through 1.d and 1.i through 1.k) and one credit card debt (SOR ¶ 1.e). He denied the remaining four allegations (SOR ¶¶ 1.f through 1.h and 1.l). The existence and amounts of all of the SOR debts are

established by credit reports in the record, dated August 23, 2022; September 2, 2021; February 3, 2021; and January 20, 2023. (GE 3, GE 4, GE 5, and GE 11.)

Applicant's delinquencies arose during his period of disability. His current job pays him a gross salary of \$12,000 per month, or about \$6,000 net. He lives remotely for months at a time wherever his job site is located. When he is not working at a jobsite, he lives in his wife's home with their child and his stepchild in Mexico. He is paid a per diem of about \$1,500 per month to cover his living expenses when he is working remotely. He has no mortgage and pays no rent. When he is working out of his employer's offices in the United States, he lives at his brother's house during the week and with his wife on weekends. He has about \$600 in savings. He is learning how to manage his money. He claims he is "very wise" with his money and is "consistently" paying off his debts. He is trying to rebuild his credit score. (Tr. at 21-26; 34-36, 61-63.)

The current status of the debts listed in the SOR is as follows:

**1.a through 1.d and 1.i through 1.k. Federal Student Loan Collection Debts in the Amounts of \$23,595, \$18,611, \$14,441, 14,441, \$10,500, \$13,312, and \$13,31, respectively.** Applicant testified that he is currently paying these debts. He pays \$188 per month on all of his student loans. I note that Federal student loans have been in forbearance under the COVID-19 moratorium since March 2020. Applicant has been paying his loans notwithstanding the forbearance. (Tr. at 26-27, 29, 33, 63-68; GE 3 at 8-9; GE 4 at 2-3; GE 5 at 3, 4, 5, 6; and GE 11 at 4, 5.)

Applicant provided after the hearing detailed statements from one of the Government's student loan service companies. It appears from these statements that ten of Applicant's student loans have been consolidated and are being paid every month from Applicant's monthly payments of about \$184. The statement marked as AE G also reflects that Applicant's monthly payments began February 2022. The statements marked as AE H reflect that all ten of the loans are Federal Subsidized and Unsubsidized Stafford Loans and that the payments are solely being applied to interest accruing on the loans. These documents support Applicant's claim that all of the student loans alleged in the SOR are being paid every month with his single payment. These debts are in the initial stage of being resolved. (AE G; AE H.)

**1.e. Charged-Off Credit-Card Debt in the Amount of \$464.** Applicant credibly testified that he paid this debt, though he is uncertain when it was paid. The debt is listed in the February 2021 credit report in the record, but not in any of the more recent credit reports. This debt is resolved. (Tr. at 27, 65; and GE 5 at 4.)

**1.f through 1.h. Medical Debts in Collection in the Amounts of \$148, \$109, and \$108, respectively.** Applicant testified that he mistakenly denied these debts in his Answer. He acknowledged that they are his debts and credibly testified that he has paid them. The debts are listed in the February 2021 credit report in the record, but not in any

of the more recent credit reports. These debts are resolved. (Tr. at 27-28, 65; and GE 5 at 5.)

**1.I. Auto Loan Debt in Collection in the Amount of \$12,259.** Applicant purchased a vehicle with a loan in 2010. The vehicle was stolen in Mexico when he took the car there in about 2014. His insurance company declined coverage for the loss since the loss occurred outside the United States and was not covered by his U.S. insurance policy. Applicant has not repaid the loan and believes it may have dropped off his credit report due to age. He understands that he still owes this debt, but he does not know how to approach the creditor or whatever company owns the debt at this time. He asserted that he is “open” to paying off the loan because he wants to pay off every debt he is “capable” of paying. This debt is not yet resolved, but Applicant intends to pay it when he is able to do so. (Tr. at 29, 45, 68-70; and GE 5 at 7.)

Applicant also admitted at the hearing that he has not yet filed his 2021 Federal income tax returns. He claimed he lost the paperwork he needed to file his return. He plans to file this tax return when he submits his 2022 return. Applicant was questioned at the hearing about an unpaid personal loan that was referred to collection in the amount of \$3,209. The debt appeared in the Government’s January 20, 2023 credit report (GE 11). He took out the loan during a period of unemployment in 2021 and then was unable to repay it. He paid the debt shortly before the hearing. Neither the un-filed tax return nor the recent paid collection debt is alleged in the SOR. (Tr. at 49-50, 58-60.)

## **Paragraph 2 - Guideline J, Criminal Conduct**

The Government alleged that Applicant is ineligible for clearance because of his criminal conduct, which raises questions about his judgment, reliability, and trustworthiness; and about his ability and willingness to comply with laws, rules, and regulations. In his Answer Applicant admitted that he plead guilty to criminal charges during the period 2006 through 2014. The specifics of the charges and guilty pleas are as follows:

**2.a. Driving Under the Influence of Alcohol (DUI) in 2006.** Applicant was arrested in 2006 and charged with DUI and DUI .08% BAC or more. He plead no contest in 2007 to DUI 0.08% BAC or more and was sentenced to five years of probation and fined. This DUI charge arose out of a bar fight in which Applicant was involved with a number of other individuals. He was intoxicated at the time. He drove away from the bar to flee the others involved and had a serious accident. He has experienced multiple surgeries since that have caused him to experience periods of disability and unemployment. Starting in 2017 he has been healthy enough to work full time. (Tr. at 22-23, 37, 51-52; GE 1 at Section 22; GE 8.)

**2.b. False Imprisonment and Battery of Spouse in 2010.** Applicant was arrested in 2010 and charged with False Imprisonment and Battery of Spouse. He plead guilty to Battery of Spouse and was sentenced to five days in jail and three years of probation. He

was on probation at the time due to his 2006 sentence for DUI .08% BAC or more, as noted above. The incident that gave rise to Applicant's arrest in 2010 came at a time when his first marriage was ending. His then-wife accused Applicant of picking her up by her neck and throwing her against the wall. He denied the allegation at his security clearance hearing stating that he was recovering from back surgery three or four weeks earlier and could not physically have done what he was accused of doing. He also testified that he pled guilty to avoid a six-month jail sentence. The reduced sentence "played a major role" in his decision to plead guilty to the charge of Battery of Spouse. He conceded that he lied to the criminal court judge by pleading guilty and admitting the offense, which he now denies committing. He further explained that he was experiencing a lot of pain from a recent surgery and was not "thinking straight" at the time of his guilty plea. (Tr. at 37-39, 52-56, 77-78; GE 1 at Section 22; and GE 6 at 5-6.)

**2.c. DUI and DUI within Ten Years of Prior DUI Conviction.** In 2014 Applicant was arrested again for DUI. He pled guilty to DUI within Ten Years of Prior DUI Conviction. He was sentenced to five years of probation and fined. This incident occurred after Applicant lost custody of his children. A consequence of his conviction on that charge was that Applicant's license was suspended for a period. He has never sought to have his license reinstated. He does not currently have a driver's license. He takes public transportation instead. (Tr. at 40-42, 56-57; GE 1 at Section 22; and GE 6 at 7; GE 7.)

## **Mitigation**

Applicant is trying to become financially stable and pay his debts that arose during his disability. He has provided a list of his assets and liabilities. His assets include about \$4,000 of investments in certificates of deposits. His liabilities include a car loan on a vehicle he purchased for his wife in Mexico. He also provided evidence of an investment portfolio with a value of about \$3,200. In addition, he provided evidence of a whole-life insurance policy in the face amount of \$100,000 that he purchased in November 2022. With respect to his unfiled Federal tax return for tax year 2021, he provided an IRS Wage and Tax Statement for 2021 that provides him with the necessary information to file his return, though the return will be filed late. (AE C through F.)

## **Policies**

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 - Guideline F, Financial Considerations**

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

As of the date the SOR was issued, Applicant owed approximately \$120,000 for 12 delinquent debts, including \$106,000 in past-due student loans. These facts render the foregoing disqualifying conditions applicable and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, or 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 debts arose under the unusual circumstances of his car accident in 2006 that left him disabled and unable to work for many years. He had insufficient income to begin to repay his student loans. The loss of his vehicle in a car theft in Mexico in 2014 that was not covered by Applicant's U.S. insurance policy also occurred under highly unusual circumstances. With his disability and lack of employment income, he was forced to divert his car payments to other priorities. Overall, Applicant's behavior does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is established.

The condition that caused Applicant's financial problems was that he was disabled, had multiple surgeries, and was unable to earn a living for a long period of time. However, his disability arose from circumstances that were entirely within his control. While intoxicated in a bar, he became the subject of a bar fight pitting him against a number of other occupants of the bar. He escaped the bar and drove off. He had an accident and was injured. The injuries resulted in his disability. He was charged and convicted of DUI. Applicant bears sole responsibility for his accident. Nevertheless, he has acted responsibly under the circumstances by beginning to repay his large student loan debt and paying off other debts once he was financially able to do so. He must still pay the auto loan, but he has every intention to do so. AG ¶ 20(b) partially applies.

AG ¶ 20(d) is established. He has initiated a good-faith effort to repay his over-due creditors and has repaid four of them. He has begun to repay his student loans about one year ago. He has not yet developed a plan to repay his debt on the vehicle loan, but he credibly stated that he intends to repay all of his debts from his past, including that debt.

Overall, Applicant has met his burden to mitigate security concerns under Guideline F, financial considerations. He has acted responsibly within his available means since beginning to work again to repay his debts following a disabling incident that resulted in years of limited income. Paragraph 1 is found for Applicant.

## **Paragraph 2 – Guideline J, Criminal Conduct**

The security concern under this guideline is set out in AG ¶ 30 as follows:

Criminal activity creates doubt about a person'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 two conditions that raise security concerns and may be disqualifying in this case:

(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; and

(d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant was convicted of three crimes during the period 2006 through 2014. One of the crimes occurred while he was on probation for a prior conviction. This evidence shifts the burden to Applicant to establish mitigation.

AG ¶ 32 sets forth four mitigating conditions under Guideline J. The following three mitigating conditions have possible application to the facts in this case:



(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.

AG ¶ 32 (c) has not been established. At the hearing, Applicant denied that he abused his first wife prior to his arrest in 2010. The fact that he pled guilty to Battery of Spouse undercuts his testimony that he was innocent of that charge. Also, the police found the complainant's statements credible and determined that there was probable cause to arrest Applicant and charge him with Battery of Spouse. The record contains reliable evidence to support that Applicant committed the offense.

AG ¶¶ 32 (a) and (d) have been fully established. So much time has passed since the 2014 DUI conviction without any recurrence<sup>8</sup> that additional criminal conduct is unlikely. Applicant has relinquished his driver's license making it highly unlikely that he will drive again, let alone drive while under the influence of alcohol. In the past, there was evidence of a pattern of criminal behavior, but Applicant has not engaged in any criminal behavior since 2014. His past criminal behavior does not cast doubt on his reliability, trustworthiness, or good judgment. Moreover, there is evidence of successful rehabilitation. Since Applicant has overcome his disability and has been able to return to the workplace, he has worked hard to be successful, to be able to support his family, and to pay child support.

Overall, Applicant has met his burden to mitigate security concerns under Guideline J, criminal conduct. Paragraph 2 is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Further comments are warranted. Applicant's finances suffered a large blow when he became disabled. Over the years, he has worked to recover his health sufficiently to be able to return to a job, earn a living, and regain the self-respect of being able to support himself and his new family. His work requires significant hardships in that he works remotely for months at a time and away from his family. He is seeking to restore his financial health as well by paying his debts, saving money, and purchasing life insurance to protect his family's future. His testimony about his intentions to repay all of his debts was sincere and credible. His past criminal conduct is unlikely to be repeated. The many years that have passed since his most recent arrest without any incidents involving law enforcement supports that conclusion. Overall, the record evidence leaves me without questions or doubts as to Applicant's suitability for national security eligibility and a security clearance at this time.

### **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: Subparagraphs 1.a through 1.i:	FOR APPLICANT For Applicant
Paragraph 2, Guideline J: Subparagraphs 2.a though 2.c:	FOR APPLICANT For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON  
Administrative Judge