



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



In the matter of:)
)
) ISCR Case No. 22-00255
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines E (personal conduct), F (financial considerations), and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On March 22, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, F, and J. Applicant responded to the SOR on May 3, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on October 25, 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 November 2, 2022. As of January 9, 2023, he had not responded. The case was assigned to me on January 26, 2023. The Government exhibits (GE) included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He served on active duty in the U.S. military from 2002 until he was discharged with a bad conduct discharge in 2017. He has worked for defense contractors since 2017. He has an associate degree earned in 2017. He is single with four children. (GE 3-5, 9)

Applicant was an E-7 in 2014 when he committed the offenses that resulted in multiple charges under the Uniform Code of Military Justice (UCMJ). The charges, for violations of Article 90 (disobey lawful order of commissioned officer); four specifications of Article 92 (fail to obey general order: fraternization); Article 107 (false official statement); and three specifications of Article 128 (two specifications of assault by battery, and one specification of aggravated assault), were referred to a general court-martial. (GE 3-5, 9, 10)

In 2015, pursuant to a pretrial agreement, Applicant pleaded guilty to all of the charges and specifications, except the aggravated assault specification, to which he pleaded not guilty. He pleaded guilty to the two assault specifications by unlawfully touching the victim. He was sentenced to reduction to E-1, confinement for six months, and a bad conduct discharge. His pretrial agreement limited his confinement to 120 days and his reduction to E-4. (GE 3-5, 9)

Applicant described the offenses during his background interview and in his response to the SOR. He admitted to having inappropriate relations with four junior servicemembers. He described the assaults:

I got in an argument with a [servicemember] I was seeing at the time and she grabbed my truck keys and would not give them back so I grabbed her by the wrist and opened her hand to get them so I could leave and it bruised her wrist. Another time [we were] having consensual sex and I grabbed her a bit too hard and rough and I left bruises on her that way.

Applicant admitted that he lied during the investigation into the charges, stating, “[t]he only reason I lied was because I was so scared of what might happen to me and my [military] career.” He stated that the Article 90 occurred because his commanding officer “was messing with [his] platoon and wanted them to do unsafe acts and [Applicant] told him no in a not so respectful manner.” That is an inaccurate description of the charge. The charge was actually a violation of an order for Applicant to have no contact with one of the servicemembers involved in the fraternization. (GE 3, 9, 10)

Applicant was unemployed for about 18 months after his court-martial. He was likely on unpaid appellate leave after his release from confinement until his discharge was approved in 2017. (GE 4, 5)

The SOR alleges 11 delinquent debts with balances totaling about \$35,500. The debts are established through Applicant’s admissions and credit reports. (GE 3, 5-8)

SOR ¶¶ 1.a and 1.b allege debts of \$11,943 and \$6,093 to a collection company on behalf of a financial institution that specializes to loans to military servicemembers. SOR ¶ 1.h alleges a debt of \$6,041 to the same financial institution. When he was interviewed for his background investigation, Applicant stated that the military was responsible for the \$11,943 debt. He did not explain why the military would prosecute him and discharge him with a bad conduct discharge and then turn around and pay his personal loan. (GE 3, 5-8)

Applicant stated in his response to the SOR that he made payment arrangements with the collection company for the SOR ¶¶ 1.a and 1.b debts to pay \$210 per month to resolve both debts. He documented that he entered a payment arrangement with the collection company in March 2022 to resolve the \$6,093 debt by an initial payment of \$93, followed by 23 monthly payments of \$60. He did not provide proof of any payments, and he did not provide any documentation about the \$11,943 debt. He stated that he attempted multiple calls to the financial institution to make payment arrangements for the \$6,041 debt (SOR ¶ 1.e), but the creditor had not returned his calls. He stated that he would continue his attempts to reach the creditor and resolve the debt. (GE 3, 5-8)

SOR ¶ 1.c alleges a delinquent debt of \$5,014 for a military exchange credit card. When he was interviewed for his background investigation, Applicant incorrectly stated that he thought the debt was for a military travel credit card, and the debt should have been erased or forgiven because it was incurred while he was in the military. He wrote in his response to the SOR that his wages are being garnished \$100 per month until the debt is resolved. He did not submit any supporting documentation. (GE 3, 5-8)

SOR ¶ 1.d alleges a delinquent debt of \$1,786 to a collection company on behalf of a financial institution that specializes to loans to military servicemembers (different collection company and different financial institution than alleged in SOR ¶¶ 1.a, 1.b, and 1.e). When he was interviewed for his background investigation, Applicant incorrectly stated that he thought the debt was for a military travel credit card, and the debt should have been erased or forgiven because it was incurred while he was in the military. He documented that he entered a payment arrangement with the collection company in March 2022 to resolve the \$1,786 debt by an initial payment of \$50, followed by 17 recurring payments of \$50, and a final payment of \$36 in September 2023. He did not provide proof of any payments. (GE 3, 5-8)

Applicant admitted owing the \$1,289 delinquent debt to an appliance store (SOR ¶ 1.e). He stated that he made arrangements with the creditor to pay \$50 per month until the debt is resolved. He submitted a loan statement from the creditor dated March 16, 2022, but no evidence of any recent payments. (GE 3, 5-8)

Applicant stated that he was current on the \$456 delinquent debt to a bank (SOR ¶ 1.f). He stated the spending limit was \$300, and he had been making on-time payments to the bank. He did not submit any supporting documentation. The debt is listed as delinquent with a \$456 balance on credit reports from April 2020, September 2021, and May 2022. (GE 3, 5-8)

Applicant admitted owing the \$291 delinquent debt to a bank (SOR ¶ 1.g). He documented that he entered a payment arrangement with the bank in March 2022 to resolve the debt by monthly payments of \$25. He did not provide proof of any payments. (GE 3, 5-8)

SOR ¶¶ 1.i and 1.j allege medical debts of \$1,444 and \$941. SOR ¶ 1.k alleges a \$292 debt to an insurance company. The debts are listed on the April 2020 credit report, but not the later credit reports. Applicant stated that he attempted multiple calls to the agencies collecting the debts to make payment arrangements, but the agencies did not return his calls. He stated that he would continue his attempts to reach the agencies and resolve the debts. (GE 3, 5-8)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in February 2020. He reported his general court-martial conviction. He answered “No” to all of the financial questions under Section 26, which included the following:

In the last seven (7) years, [have] you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

In the last seven (7) years, [have you] been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

[Are you] currently over 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)¹

Applicant stated that he did not intend to lie on the SF 86. He stated that he had not kept up to date on his finances, and he did not know where to look or how to find the information. (GE 3)

Applicant expressed remorse for his conduct in the military. He stated that he made stupid choices when he was younger, and he has to live with them every day. He stated that he is growing more and more, and he is just trying to make a better life for him and his family. (GE 3)

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,

¹ The SOR did not allege that Applicant falsified the last two questions. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

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 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 are 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; and

(e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

Applicant's criminal conduct resulted in a general court-martial conviction and a bad conduct discharge. AG ¶¶ 31(b) and 31(e) are 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; 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.

There is a direct correlation between Applicant's criminal conduct and whether he should hold a security clearance. In addition to the assaults, he violated orders on numerous occasions, and he lied in an attempt to cover up his crimes. He was untruthful during his background interview and in his response to the SOR when he described one of the offenses. It has been more than eight years since the criminal conduct. Nonetheless, I have unmitigated concerns. Applicant's criminal conduct continues to cast doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations. The above mitigating conditions, individually or collectively, are insufficient to alleviate those concerns.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a trustworthiness concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶ 2.a alleges that Applicant falsified the SF 86 when he failed to report his debts under the following specific question:

In the past seven (7) years, [have] you had bills or debts turned over to a collection agency?

It is unclear why this was the only question alleged when there were other questions that were more appropriate. In order to find a falsification under this specific question, the Government must prove by substantial evidence that Applicant had debts that were turned over to a collection agency; that he knew that he had debts that were turned over to a collection agency; and that he intentionally failed to report that he had debts that were turned over to a collection agency. The Government did not prove that Applicant was aware when he submitted the SF 86 that he had debts that were turned over to a collection agency. There is insufficient evidence to establish that Applicant intentionally falsified the specific question alleged in SOR ¶ 2.a. AG ¶ 16(a) is not applicable to that question. SOR ¶ 2.a is concluded for Applicant.

SOR ¶ 2.b cross-alleges the criminal conduct resulting in the general court-martial conviction. Applicant's conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable. AG ¶ 16(c) is not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the criminal conduct guideline. However, the general concerns about questionable judgment and an unwillingness to comply with rules and regulations contained in AG ¶¶ 15 and 16(c) are established. AG ¶ 16(b) is applicable to the false official statement made during the investigation into the charges.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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.

Under the same rationale discussed above for criminal conduct, Applicant's conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

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 a history of financial problems, including multiple delinquent debts. AG ¶¶ 19(a), and 19(c) are applicable.

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

Applicant attributed his financial problems to his unemployment after his court-martial conviction. That came because of Applicant's misconduct. It was not largely beyond his control.

There is no evidence that Applicant did anything about his finances until he received the SOR. The timing of ameliorative action is a factor that should be brought to bear in evaluating an applicant's case for mitigation. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019).

Applicant provided documentation of some payment agreements, but no actual payments. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). He indicated that he intended to resolve his debts. Intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). The medical debts and the small insurance debt (SOR ¶¶ 1.i, 1.j, and 1.k) have minimal security significance, and they are mitigated.

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

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 E, and F, and J in my whole-person analysis. Applicant lied in the military in an attempt to avoid punishment, and he has been less than completely forthright in the security clearance process.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct, financial considerations, and criminal 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.h:	Against Applicant
Subparagraphs 1.i-1.k:	For Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	Against Applicant
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against 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.

Edward W. Loughran
Administrative Judge