



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



In the matter of:)	
)	
)	ISCR Case No. 21-02454
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/19/2023

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 February 18, 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 March 8, 2022, and requested a hearing before an administrative judge. The case was assigned to me on November 15, 2022.

The hearing was convened as scheduled on January 19, 2023. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. Applicant testified and submitted Applicant’s Exhibits (AE) A through I, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted an email and attached documents that I have marked AE J through O and admitted without objection.

Findings of Fact

Applicant is a 64-year-old prospective employee of a defense contractor. He will be hired if he receives a security clearance. He attended college for several years without earning a degree. He is married with an adult child. (Transcript (Tr.) at 16, 23-24; GE 1, 2)

Applicant has a history of criminal conduct. He was arrested in 1979 and charged with burglary of a building. He was found guilty, but the conviction was set aside, and the charge dismissed after he completed probation. (Tr. at 40; Applicant's response to SOR; GE 3)

During his background interview in February 2021, Applicant stated that he was in a car with three friends, when two of his friends decided to burglarize an electronics store. He stated that he and one of the friends did not want to be involved and stayed in the car while his two friends burglarized the store. He confirmed the accuracy of the interview in his undated response to interrogatories. At his hearing, he admitted that he participated in the burglary. He stated that he did not go into the store, but his friends handed the stolen items to him through the broken store window.¹ (Tr. at 40-42; Applicant's response to SOR; GE 2, 3)

Applicant was arrested in 1998 and charged with theft of property greater than or equal to \$1,500 and less than \$20,000. He received a deferred adjudication. He stated that a friend asked him to sell some computer hard drives for him. Applicant stated that he sold the hard drives without realizing they were stolen. (Tr. at 39-40; Applicant's response to SOR; GE 2, 3)

Applicant was arrested in 2004 and charged with driving while intoxicated (DWI) and reckless driving. He pleaded no contest to the DWI charge, and the reckless driving charge was dismissed. (Tr. at 38; Applicant's response to SOR; GE 2, 3)

Applicant was arrested in 2008 and charged with DWI, second offense. He was found guilty and received probation. He stated that he was stopped by the police after he left bars in 2004 and 2008. He felt like he was in control during both occasions, and that he could operate a vehicle. (Tr. at 38; Applicant's response to SOR; GE 2-4)

Applicant worked for a computer company for several years until he was laid off in 2016. He stated that for about three years, he would take damaged hard drives and other pieces of computer equipment out of the company's bin where the equipment was placed to be recycled. He stated that he sold the equipment as scrap to a recycling company, and that he only received about \$200 over the course of three years for the items. The theft was discovered after the recycling company sold the parts to another

¹ The SOR did not allege that Applicant provided false information during his background interview. Any matter not alleged in the SOR will not 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.

party, who sold them as new or restored parts. The FBI was involved in the investigation, which led back to Applicant's participation in the theft and sale of the computer parts. (Tr. at 16-20, 28-32; GE 2)

Applicant was arrested in April 2017 and charged with theft of property greater than or equal to \$30,000 and less than \$150,000. He received a deferred adjudication in January 2019 in which he would be on community supervision (probation) for seven years, and he is required to pay \$32,000 in restitution, costs, and fees. He is eligible for early termination from probation after four years if the restitution is completed. He was paying \$600 per month, but he had to decrease the payments when he was laid off in May 2022. He made a \$500 payment in January 2023. He paid a total of \$21,965 and still owes \$8,265. (Tr. at 17-23, 33-37, 42; Applicant's response to SOR; GE 2-4; AE I, J, M, N)

Applicant has been unemployed since he was laid off in May 2022. He stated that he does contract work, and he had periods between contracts when he was unable to pay his debts. (Tr. at 20-21, 24, 48-49; GE 2, 6-8)

The SOR alleges six delinquent debts. However, the debts alleged in SOR ¶¶ 3.b and 3.c are duplicate accounts. The non-duplicate debts are established through credit reports and Applicant's admissions.

Applicant asserted that the debts in SOR ¶¶ 3.a (\$6,477), 3.b (\$4,798), and 3.c (\$3,001) are duplicate accounts. As indicated above, SOR ¶¶ 3.b and 3.c are duplicate accounts, but the evidence does not support that SOR ¶ 3.a is a duplicate account. The names, amounts, and account numbers are all different. The SOR ¶ 3.a account is listed on all of the credit reports in evidence. Applicant provided pages from what appears to be a credit report to support his position, but the documents show the opposite. He wrote that the pages show that he paid 79% of the loan, and the account was closed in May 2018. The pages show that the loan was charged off and closed in May 2018. The page shows a balance of \$6,477 on a \$3,600 loan, and that he "paid off -79% of the loan." Applicant did not account for the negative sign in front of "79%." There is no evidence that he has made any payments toward the debt. (Tr. at 42-45; Applicant's response to SOR; GE 6-8; AE J, L)

Applicant has been paying \$66 per month on the SOR ¶¶ 3.b/3.c debt since March 2019. Credit reports indicate the balance was reduced from \$4,798 to \$3,001 to \$1,801 as of January 2023. (Tr. at 21-22; Applicant's response to SOR; GE 6-8; AE A, D, E)

Applicant paid in full the \$613 debt alleged in SOR ¶ 3.d, with payments of \$491 and \$122 completed in June 2022. He paid in full the \$419 debt alleged in SOR ¶ 3.e, with a payment of \$273 completed in January 2023. He paid in full the \$147 medical debt (SOR ¶ 3.g) in May 2022. (Tr. at 22, 45-48; Applicant's response to SOR; GE 6-8; AE A, F-H, J, K, O)

Applicant stated that he thought he paid or is paying all of his delinquent debts. His layoff in May 2022 affected his ability to pay all of his debts. In about July 2021, he bought a new vehicle financed with an auto loan of about \$56,800, with monthly payments of \$961 for 75 months. (Tr. at 49-51; GE 6)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline 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

(c) individual is currently on parole or probation.

Applicant has a history of criminal conduct going back to 1979. He is on probation under a deferred adjudication for theft of property greater than or equal to \$30,000 and less than \$150,000. The above disqualifying conditions 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;

(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.

During his background interview in February 2021, Applicant stated that he did not participate in the 1979 burglary and that he stayed in the car while his two friends burglarized the store. At his hearing, he admitted that he participated in the burglary. He is paying \$32,000 in restitution and court costs for damaged computer parts that he admits taking, but he stated that he only received about \$200 for the parts. Because of his previous inconsistent statements about a previous burglary, it is difficult to give great weight to his statements about this theft. The phrase *falsus in uno, falsus in omnibus* (false in one thing, false in everything) is not necessarily true, but it is sufficient to give pause and leave lingering doubts.

It has been more than six years since the criminal conduct, but Applicant remains on probation. 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 security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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 cross-alleges the criminal conduct alleged under Guideline J. 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 ¶ 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;

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

(f) the information was unsubstantiated or from a source of questionable reliability.

Under the same rationale discussed above for criminal conduct, Applicant remains vulnerable to exploitation, manipulation, and duress. His 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;
- (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 intentional financial breaches of trust.

Applicant has a history of financial problems and delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

SOR ¶¶ 3.b and 3.c allege duplicate accounts. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 3.b is concluded for Applicant.

SOR ¶ 3.g cross-alleges the 2017 charge of theft of property from his employer. Applicant stole computer equipment from his employer. That is an intentional financial breach of trust. AG ¶ 19(d) is 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;
- (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 paid in full the \$613 debt alleged in SOR ¶ 3.d, the \$419 debt alleged in SOR ¶ 3.e, and the \$147 medical debt alleged in SOR ¶ 3.g. He has been paying \$66 per month on the SOR ¶ 3.c debt since March 2019, and he has reduced the balance from \$4,798 to \$1,801. Those four debts are mitigated.

Applicant has been unemployed since he was laid off in May 2022. He stated that he does contract work, and he had periods between contracts when he was unable to pay his debts. Applicant's unemployment factors into his financial problems, but his criminal conduct, probation, and restitution also played a part. In about July 2021, when he still had multiple delinquent debts, he bought a new vehicle financed with an auto loan of about \$56,800, with monthly payments of \$961 for 75 months. He has done nothing to resolve the \$6,477 debt alleged in SOR ¶ 3.a, and he presented no evidence to indicate that he plans to pay the debt.

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 the \$6,477 debt. The intentional financial breach of trust is not mitigated under the same rationale discussed under the criminal conduct guideline. Applicant's 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 sufficient to fully mitigate financial considerations security concerns.

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 have incorporated my comments under Guidelines E, F, and J in my whole-person analysis.

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 J:	Against Applicant
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline F:	Against Applicant
Subparagraph 3.a:	Against Applicant
Subparagraphs 3.b-3.f:	For Applicant
Subparagraph 3.g:	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