



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 22-00642
)
 Applicant for Security Clearance)

Appearances

For Government: Jenny G. Bayer, Esq., Department Counsel
For Applicant: *Pro se*

06/08/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), H (Drug Involvement and Substance Misuse), and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 15, 2021. On May 6, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, H, and E. The CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 28, 2022. Scheduling of the hearing was delayed by COVID. The case was assigned to me on March 24, 2023. On March 30, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on April 20, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I held the record open until May 5, 2023, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibits (AX) A through G, which were admitted without objection. DOHA received the transcript (Tr.) on May 1, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a, 1.g, 2.a-2.c, 3.a, and 3.b. Although he admitted the allegations in SOR ¶¶ 1.g, 3.a, and 3.b, his explanations for those allegations amount to denials, and I have treated them as such. He denied the allegations in SOR ¶¶ 1.b-1.f and 2.d. His admissions are incorporated in my findings of fact.

Applicant is a high school graduate. He has never married and has no children. He is a 26-year-old electrician employed by defense contractors since November 2016. He has worked for his current employer since March 2021. (Tr. 14) He has held a security clearance since 2014. (Tr. 15) His SCA reflects a period of unemployment, but he testified that it is incorrect and that he has been continuously employed since November 2016. (Tr. 24-25)

Applicant served on active duty in the U.S. Army from December 2014 to April 2016. He testified that he purchased and used marijuana with a girlfriend two or three times a week while he was on active duty, and he sometimes used it more than once a day. (Tr. 28-29) In October 2015, he underwent a urinalysis that tested positive for marijuana. He received nonjudicial punishment consisting of reduction in rank from private first class to the lowest enlisted rank and extra duty for 60 days. He was required to attend a drug and alcohol abuse program. In April 2016, he was discharged before he completed his enlistment. He received a general discharge under honorable conditions. He no longer has contact with the woman with whom he used marijuana while on active duty. (GX 1 at 24; GX 8 at 10)

In September 2017, Applicant was arrested for possession of marijuana. He was convicted and sentenced to 30 days in jail, suspended for 30 days. He was placed on unsupervised probation for one year, fined \$250 plus court costs, and required to complete an alcohol and substance abuse program (ASAP). His driver's license was suspended for six months. (GX 4)

In October 2018, while Applicant was working for his current employer, he was arrested for felony possession of marijuana with intent to distribute. The charge was

amended to misdemeanor possession of marijuana. He was convicted and sentenced to 30 days in jail, suspended for 30 days. He was placed on unsupervised probation for two years. He was fined \$250 and court costs. His driver's license was suspended for six months. (GX 5; GX 6)

In Applicant's answer to the SOR, he admitted that he used marijuana "on and off" from 2015 to 2019. He refers to his years of marijuana use as a "dark time." He testified that he last used marijuana in 2020. (Tr. 40) He continues to have bi-weekly contact with a friend with whom he used marijuana after his discharge from the Army. (GX 8 at 10)

When Applicant submitted his SCA in April 2021, he answered "Yes" to a question asking if, in the last seven years, he had been arrested by any police officer, sheriff, marshal or any other type of law enforcement official; charged, convicted, or sentenced for a crime in any court; or if he currently was or had been on probation or parole. He disclosed his arrest in September 2017 for simple possession of marijuana, but he did not disclose his arrest in October 2018 for felony possession of marijuana, and he did not disclose that he had been placed on probation twice for his two marijuana-related convictions. (GX 1 at 34-36) When Applicant was interviewed by a security investigator in September 2021 and asked similar questions about his arrests, convictions, or probation, he disclosed the September 2017 arrest and several traffic citations, but he did not disclose his October 2018 arrest, conviction, and probation. (GX 8 at 8-9) He testified that he did not fully disclose his drug involvement in his SCA because he forgot about it. He testified that he was in a "bad place" and that he tries not to think about it. (Tr. 33)

Credit reports from July 2021 and July 2022 reflect that Applicant has eight delinquent debts. He enlisted in the Army at age 17, immediately after graduating from high school. He attributed his delinquent debts to his financial inexperience and not understanding money management. (Tr. 27) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: consumer debt charged off for \$4,409. The July 2022 credit report reflects that Applicant previously had two loans from this creditor that were paid, and the most recent payment on the debt alleged in the SOR was in April 2022. (GX 3 at 4) Applicant submitted a statement claiming that he is making monthly \$100 payments by phone. (AX B) He submitted no documentation to support his claim.

SOR ¶ 1.b: personal loan from credit union charged off for \$3,824. Applicant testified that he obtained this loan to make repairs on his car. (Tr. 44) After his interview with a security investigator, he made a payment agreement in March 2022 providing for monthly \$100 payments. (Tr. 45) He has paid \$1,203 and owes a balance of \$2,634. (AX F)

SOR ¶ 1.c: personal loan referred for collection of \$2,661. Applicant started making monthly payments of \$233.59 shortly before his interview with a security investigator. (AX C) The balance reflected in the July 2022 credit report was \$1,613. (GX 3 at 3) The debt has been paid. (AX C)

SOR ¶ 1.d: payday loan placed for collection of \$2,013. Applicant obtained this loan to move from one state to another in April 2019. When he was interviewed by an investigator in 2021, he had not made any payments. (Tr. 48) He settled this debt for \$1,006 in January 2023, after he received the SOR. (AX G)

SOR ¶ 1.e: medical bill placed for collection of \$718. Applicant testified that he was hospitalized and thought that he was covered by his mother's health insurance. (Tr. 49) After the hearing, he submitted a statement claiming that this bill was paid, but that he has been unable to obtain a receipt from the collection agency. (AX B) The debt was placed for collection in July 2021, but it is not listed in the July 2022 credit report. (GX 2 at 3; GX 3)

SOR ¶ 1.f: telecommunications debt placed for collection of \$350. After Applicant was interviewed by an investigator, he made monthly payments until the debt was paid in May 2022. (Tr. 51; AX D)

SOR ¶ 1.g: car loan charged off for \$9,701. Applicant claims that this debt was for a "lemon" car that he bought when he was on active duty. He does not intend to pay it. It was charged off in January 2016, and he is waiting for it to age off his credit record. (AX B at 2) He submitted no documentary evidence of efforts to resolve this debt.

SOR ¶ 1.h: car loan from credit union charged off for \$6,959. Applicant failed to make the payments on his car loan, and the car was repossessed. He made a payment agreement in March 2022, after his security interview but before he received the SOR. It provides for monthly \$100 payments. He has paid \$2,853 and owes a balance of \$5,559. (AX E)

Applicant's current take-home pay is about \$3,000 per month when he works in the United States and about \$5,000 to \$7,000 per month when he is overseas, depending on the country. He has a 10% disability rating from his Army service and he receives about \$150 per month in disability pay. (Tr. 18-19) He testified that he has about \$1,000 left after paying all his bill, and he invests it in stocks, bonds, and crypto currency. At the time of the hearing, he had about \$8,000 in stocks and bonds and \$500 to \$1,000 in crypto currency. (Tr. 58-59) He has a financial advisor for his investments, but he has never obtained financial counseling about resolving his delinquent debts. (Tr. 60)

The president of the company for whom Applicant works has held clearances for 19 years and known Applicant for two years. He states that Applicant "has demonstrated on multiple projects that he is a reliable, hardworking, and honest person with high integrity and good character." (AX A)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to

“control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-

20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. . . . 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's history of delinquent debts and his unwillingness to resolve the debt alleged in SOR ¶ 1.g establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely. Applicant's ongoing, unpaid debts reflect a continuing course of conduct and are "recent" for the purposes of the Guideline F mitigating conditions. ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017).

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.c, which Applicant resolved before he was confronted with his debts by a security investigator. It is not established for the debts alleged in SOR ¶¶ 1.a and 1.e, because Applicant provided no documentary evidence that he is making monthly payments on these debts. When an applicant claims that a debt is resolved or is being resolved, it is reasonable to expect him or her to present documentary evidence supporting those claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(d) is not established for the debts alleged in SOR ¶ 1.b and 1.f, because he did not begin to resolve these debts until he was confronted with them by a security investigator. It is not established for the debt alleged in SOR ¶ 1.d, which Applicant settled after receiving the SOR. "A person who begins to address concerns only after having been placed on notice that his or her access is in jeopardy may lack the willingness to follow rules and regulations when his or her personal interests are not at stake." ADP Case No. 15-03696 (App. Bd. Apr. 5, 2019). The fact that the debt alleged in SOR ¶ 1.e no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. See ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019). It is not established for the debt alleged in SOR ¶ 1.g, which Applicant has refused to pay.

AG ¶ 20(e) is not established for the car loan alleged in SOR ¶ 1.g. Although Applicant disputes this debt, he submitted no documentary evidence of the basis for the dispute or actions to resolve it.

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an

individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 25(b): testing positive for an illegal drug; and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

AG ¶ 25(f) ("any illegal drug use while granted access to classified information or holding a sensitive position") is not established. Although Applicant apparently had a security clearance when he used marijuana, there is no evidence that he had actual access to classified information at the time. See ISCR Case No. 20-03111 (App. Bd. Aug.10, 2022).

The following mitigating conditions are potentially applicable:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used;
and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) is not established. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). Applicant's drug involvement was frequent and did not occur under circumstances making it unlikely to recur. His last drug involvement was in 2020, after he was convicted of marijuana possession in February 2019 and while he was on probation and working for a defense contractor. In light of his long history of drug involvement while in the Army, while he was on probation and working for a defense contractor, I am not satisfied that his drug involvement is mitigated by the passage of time.

AG ¶ 26(b) is not fully established. Applicant has acknowledged his drug involvement. As noted in the above discussion of AG ¶ 26(a), insufficient time has passed since his last drug involvement. He no longer has contact with the woman with whom he used marijuana while he was in the Army, but he admitted that he continues to have bi-weekly contact with a friend with whom he used marijuana after he was discharged from the Army. He has not signed a statement of intent as described in AG ¶ 26(b)(3).

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

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. . . .

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶16(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; and

AG ¶16(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.

The following mitigating conditions are potentially relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(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.

AG ¶ 17(a) is not established. Applicant did not make any effort to correct the omissions from his SCA until he was confronted with the evidence by a security investigator. He did not attempt to correct or explain his omission during his security interview on September 21, 2021, until he was confronted with the evidence at the hearing.

AG ¶ 17(c) is not established. Applicant's falsifications were recent, both pertaining to his current application to retain his clearance. They did not occur under unique circumstances. They were not minor offenses. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). Falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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 Guidelines F, H, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts, drug involvement, and personal conduct.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.h:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a and 3.b:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge