



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



In the matter of:)	
)	
)	ISCR Case No. 22-01128
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2023

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the criminal conduct or personal conduct security concerns. The financial considerations security concerns were not established. Eligibility for access to classified information is denied.

Statement of the Case

On September 2, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, criminal conduct, Guideline F, financial considerations, and Guideline E, personal conduct. On an unspecified date, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on February 15, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded thirty days from receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 22, 2023. As of April 11, 2023, he had not responded. The case was assigned to me on

May 9, 2023. The Government exhibits included in the FORM (Items 1-12) are admitted in evidence without objection.

Findings of Fact

Applicant is a 23-year-old employee of a defense contractor for whom he has worked since April 2021. He earned a commercial diving certificate in March 2021. There is no other evidence of his education in the record. He has never married and has no children. (Items 3, 8)

Applicant has a history of failing to abide by established laws, rules, and regulations. In April 2019, police charged him with a misdemeanor offense of reckless driving/bad brakes after he wrecked his vehicle. After he paid court costs and fines, the court dismissed these charges after ordering a deferred disposition. In September 2020, police charged him with speeding 79 miles per hour (mph) in a 60 mph zone. He pleaded guilty and paid a fine before his court date. He claimed that his speedometer was defective. In May 2021, police charged him with reckless driving for driving 82 mph in a 60 mph zone. The court entered a deferred disposition on these charges. However, it later entered a show cause order against him for a probation violation because he failed to check in with his community service supervisor. Ultimately, the court dismissed the show cause order and he pleaded guilty to a lesser charge of defective equipment. He claimed that he completed all community service and driving improvement classes related to these charges. (Items 2, 9, 10)

In about April 2021, Applicant began dating a woman (girlfriend). After several months, he and his girlfriend began having problems with their relationship. In June 2021, they had an argument and he grabbed her by her hair and attempted to pull her into his car. In September 2021, he attempted to strangle her. His girlfriend did not file criminal charges at the time these events occurred. (Items 2, 4-7, 9)

In late December 2021, Applicant was visiting his girlfriend from out of town around Christmastime. At some point during his visit, they began arguing. During the argument, he attempted to strangle her and threatened to “slump” her and her family. Given the context, I find that he meant that he would physically harm her and her family. On December 24, 2021, his girlfriend went to the local magistrate’s office and had a protective order (PO) issued against him. The PO prohibited him from having contact with his girlfriend. While she was applying for the PO, he harassed her by calling her on her cell phone numerous times. (Items 2, 4, 6)

Early on December 25, 2021, when police attempted to serve Applicant with the PO, he evaded their efforts and was verbally abusive towards them over the phone. Police eventually found him “hunkered down in the driver’s seat” of his vehicle, which was across the street from his girlfriend’s residence. They asked him to exit his vehicle, but he refused, so they physically escorted him. They served him with the PO and arrested him. Police charged him with stalking and obstruction of justice. Later that morning, he was released on bond and admonished that he must abide by the terms of the PO. Instead, in direct violation of the PO, on December 26, 2021, he went over to

his girlfriend's parent's house where she resided. He claimed that she let him in the house. He also contacted her repeatedly on her cell phone and met her in the parking lot of a restaurant. He claimed that he was trying to get his wallet back that he had left at her house. Regardless, once she returned his wallet in the parking lot, he reached into her car and grabbed her arm. After this incident, she drove to the police department to file criminal charges against him. Uncowed, he followed her in his vehicle at least part of the way to the police station. (Items 2, 4, 6-9)

That same day, police arrested Applicant again and charged him with violating the PO, stalking, and assault and battery. The next day, his girlfriend filed a criminal complaint against him for grabbing her by the hair in June 2021 and strangling her in September 2021. On December 28, 2021, he was arrested for the third time in four days and charged with committing assault and battery in September 2021. Courts ultimately found him guilty of two violations of the PO. He was sentenced to six months in jail with five months and 29 days suspended. The court either dismissed or entered orders of *nolle prosequi* on the remaining charges. The court also entered additional protective orders that prohibited Applicant from having contact with his girlfriend until as late as February 2024. On December 28, 2022, because of his criminal charges, he was barred for 30 days from the military base where he worked. All his aforementioned criminal behavior is corroborated by police reports and court records. (Items 2, 4-10)

Applicant was required to divulge the crimes that resulted in his December 2021 arrests on the Questionnaire for National Security Positions (SF 86) he submitted in January 2022 (six days after his last arrest). He failed to do so. While it was not alleged in the SOR, he did not volunteer these arrests to the DOD investigator during his August 2022 security interview. Instead, he was evasive about his criminal conduct. When the investigator asked Applicant about these arrests, he declined to elaborate on them, merely claiming that he and his girlfriend were going through "stuff" and "relationship things." Applicant failed to elaborate on his underlying conduct related to these arrests until the DOD investigator asked him multiple times and confronted him with his arrests. He has denied stalking or physically harming his girlfriend. He also denied threatening to harm his girlfriend and her family. He has not undergone any behavioral counseling or treatment. He claimed he did not divulge his criminal charges on the SF 86 because he did not read the questions carefully, and he thought he did not need to disclose charges for which he was awaiting court dates. (Items 2-9)

A credit report reflects that Applicant's federal student loan account was charged off by August 2022. The Government listed this account in SOR ¶ 2.a. An August 2022 credit report reflected a last payment date of July 2021. The credit reports reflect that the account was past due in the amount of \$4,718 with a total loan balance of \$44,082. A February 2023 credit report reflects that the account is still charged off, but that Applicant is paying under a partial payment agreement of \$222 per month. This credit report reflects a last payment date of January 2023. However, since about March 2020, federal student loans repayments have been deferred under various executive orders because of the COVID-19 pandemic. There is no evidence that Applicant's federal student loan account was delinquent before the payments on it were deferred by Presidential executive order. (Items 2, 11, 12)

Any adverse information not alleged in the SOR will not be used for disqualification purposes, however it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)).

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 is 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.

Applicant has been charged with several serious criminal offenses, and there is sufficient evidence of his criminal conduct in the form of guilty pleas, police reports, court records, and credible allegations from his victim. The evidence is sufficient to raise the above disqualifying condition.

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.

It has only been about one and one-half years since Applicant last engaged in criminal behavior. His most serious criminal conduct occurred when he was having issues with a romantic relationship. While there is no bright line rule of how much time is sufficient to show mitigation, given the seriousness of his conduct, and his willingness to continue it despite being arrested the first time, I find that it has not been long enough. Moreover, problems with romantic relationships are not unusual. I cannot find that the circumstances that led to his criminal behavior are unlikely to recur. AG ¶ 32(a) does not apply.

Applicant continues to deny that he assaulted or stalked his girlfriend. I find that he did both. I believe he is being untruthful about a material fact relevant to a security clearance adjudication. Falsifying material information in a security clearance adjudication is a criminal offense under 18 U.S.C.A. § 1001. Therefore, Applicant continues to engage in criminal behavior, further undercutting his efforts at mitigation under AG ¶ 32(a), as well as under AG ¶ 32(d), which require the passage of time without recurrence of criminal acts. Given the recency of criminal activity, and his lack of acceptance of responsibility, AG ¶ 32(a) and AG ¶ 32(d) do not apply. AG ¶ 32(c) does not apply because there is reliable evidence of criminal conduct in the form of credible allegations, police reports, and court records. None of the Guideline J mitigating conditions apply. The criminal 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's federal student loan payments were deferred because of the COVID-19 pandemic. There is no evidence that he defaulted on this loan prior to the automatic

deferral. The evidence is not sufficient to raise the above disqualifying conditions. I find in his favor with respect to the Guideline F security concerns.

Guideline E, Personal Conduct

The security concern for personal conduct 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

Applicant did not divulge his December 2021 criminal charges on his SF 86 despite being required to do so. He claimed that he did not understand that he had to report criminal activity for which he had not gone to court. I find this explanation lacks credibility and that he deliberately omitted these arrests. AG ¶ 16(a) is established with respect to his omissions.

Applicant has committed several driving infractions and violated his probation related to one of those violations. These actions support an assessment of questionable judgment, unreliability, unwillingness to comply with rules and regulations, or other characteristics indicating that he may not properly safeguard classified or sensitive information. AG ¶ 16(d) is raised by this conduct.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Deliberately omitting information from an SF 86 is not minor as it strikes at the heart of the security clearance process. Applicant did not volunteer his December 2021 arrests before he was confronted by the investigator during his security interview. Instead, when the investigator asked about these arrests, Applicant attempted to conceal the specifics and minimize their severity. There is no evidence that he has obtained counseling or taken any other positive steps to show that such behavior is unlikely to recur or to reduce vulnerability to exploitation, manipulation, or duress. None of the Guideline E mitigating factors apply.

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 J, F, and E 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 he did not mitigate the criminal conduct and personal conduct security concerns. The financial considerations security concerns were not established.

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.c:	Against Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.e:	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.

Benjamin R. Dorsey
Administrative Judge