



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



In the matter of: )  
)  
) ISCR Case No. 22-00639  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah A. Minster, Esq., Department Counsel  
For Applicant: *Pro se*

08/29/2023

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**Decision**

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HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline D (Sexual Behavior). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on April 8, 2021. On April 19, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The SOR was amended in January 2023, to add an allegation under Guideline D. The DoD 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 original SOR on May 25, 2022, and the amended SOR on February 1, 2023, and in each Answer he requested a hearing before an administrative

judge. Department Counsel was ready to proceed on June 27, 2022, and the case was assigned to me on March 8, 2023. On March 23, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 31, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A through B were admitted in evidence without objection. Applicant testified and presented character testimony from a co-worker. DOHA received the transcript (Tr.) on June 8, 2023.

I kept the record open after the hearing to allow the parties to submit documentary evidence. The Government offered GE 7, a 27-page exhibit consisting of documents from Applicant's pending criminal trial. Applicant timely submitted four exhibits: a monthly budget (AE C), a May 2023 bank statement (AE D), his Navy and Marine Corps Achievement Medal citation (AE E), and a behavioral health report (AE F). All post-hearing exhibits were admitted without objection. The record closed on June 14, 2023.

### **Findings of Fact**

Applicant admitted all allegations. His admissions are incorporated in my findings of fact.

Applicant is 32 years old. He served honorably in the U.S. Marine Corps from April 2011 to June 2015. He has been married twice. He divorced his first spouse in July 2020 after seven years of marriage and married his current spouse in February 2021, but they are currently separated. (Item 2 at 21-22, 32.) He has no children from his first marriage and from his current marriage he has two minor-aged stepchildren and a child born of the marriage in August 2021. (Tr. at 33.)

Applicant has been employed by his sponsor since October 2019 and received a promotion in April 2021. His initial annual salary was \$66,000 and after his promotion it was \$77,000. Prior to joining his employer his annual salary was \$44,000. (Tr. at 28-29.) His first spouse had limited part-time jobs, so he was providing for them on his \$44,000 salary. (Tr. at 30.) He initially received a low disability rating from the Department of Veterans Affairs (VA), but in late 2020 he was reevaluated, which resulted in higher rating that increased his monthly disability payments by over \$1,600. The increase occurred at about the time he married his second spouse. (Tr. at 32.)

The SOR alleges six delinquent debts totaling \$38,962, reflected in two credit reports from July 2021 (GE 3) and February 2022 (GE 4). Applicant offered a May 2023 credit report that no longer showed the debts alleged in SOR ¶¶ 1.a-1.c, and 1.f. (AE B.) He testified he had taken the initiative to call his primary creditor and had gone over his credit report to look at the debts he and his wife had. He stated he called the financial institution that held four of the debts, SOR ¶¶ 1.a-1.c, and 1.f, to see what his repayment options were for the accounts. He explained he would pay what he could and noted he had paid some debts in full. He offered he would make a budget to address the debts he could not afford to pay. (Tr. at 40; AE C.) He took out a hardship loan from his 401(k) retirement account in 2023. At the time of the loan, his 401(k) account held approximately

\$21,000. He withdrew \$13,000 to pay medical debts and credit debts. The medical debts arose from the 2022 birth of his child. (Tr. at 41-43.)

### **Guideline F**

**SOR ¶¶ 1.a-1.c, 1.f: four accounts charged off in the amounts of \$18,552; 10,739; \$6,493; and \$1,005, respectively.** Applicant admits the respective debts with the credit institution. He has not established payment plans for these accounts. The last payments were in the 2016-2017 period. He and his former spouse were “living beyond [their] means” and he could not make the payments because of his salary at the time. He was aware of the debts but had been trying to resolve his smaller debts first. He acknowledged SOR ¶ 1.f was simply missed. He notes they have all fallen off his credit report. (Tr. 22-23, 25; AE B.)

**SOR ¶¶ 1.d-1.e: student loans placed for collection in the amounts of \$1,137 and \$1,036.** Applicant admits the debts. He stated the loans had been frozen by the Department of Education (DoEd) during COVID and they were not requesting payment. He enrolled in the Fresh Start Transfer Program seven days prior to the hearing and was notified the day before the hearing that a determination was forthcoming. He stated if the loans were not approved for the Fresh Start Transfer Program the two loans will be renewed with a new lender. He stated he will abide by whatever the repayment plan is established to pay off the loans. (Tr. at 24; AE-A.)

I have taken administrative notice that in March 2020, as a result of the COVID-19 pandemic, the President directed the DoEd to provide the following temporary relief on DoEd-owned federal student loans: suspension of loan payments, stopped collections on defaulted loans, and a 0% interest rate. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided for the above relief measures through September 30, 2020. See Federal Student Aid (FSA) website, ISCR Case No. 20-02787 at 3 n.1 (App. Bd. Mar. 2022) This student loan debt relief was extended several times by subsequent Executive Orders. See <https://studentaid.gov/announcements-events/covid-19>. Congress recently barred any further extensions and DoEd has announced that student loan repayments will resume in October 2023. See <https://studentaid.gov/debt-relief-announcement>.

### **Guideline D**

**SOR ¶ 2.a:** This allegation alleges that Applicant was arrested on October 5, 2022, and charged with Aggravated Sexual Battery; and that the felony charge remained pending. In answering SOR ¶ 2.a in the Amendment to the SOR, he admitted the SOR allegation and noted that the case remained pending and cited a court date of May 22, 2023, (Answer to SOR ¶ 2.a.) His middle school aged stepdaughter accused him of “inappropriate touching of her behind... and that [he] requested to touch her privates.” (Tr. at 64.) His stepdaughter disclosed to police that when she was approximately 10 years old, he had sat next to her on a couch in their living room, where she reported, he had started touching her "here" while motioning to her vaginal area for the detective. She

told the detective he asked her if he could, over her clothing, feel it, to which she said no. (GE 6; GE 7 at 15-16.)

Applicant acknowledged in his police interview he had touched his stepdaughter's vagina but stated that he had explained to the detective he had "unintentionally touched her vagina." (Tr. at 66; GE 6; GE 7 at 16.) He declined to say if his stepdaughter's allegations were false because he has no recollection of the incidents. He did not "believe she would lie about something that happened." (Tr. at 67.) He explained that he is not denying the allegations by his stepdaughter and cites his sleep disorders for his lack of memory for why he cannot recall any incidents. (Tr. at 69, 77-78, 81, 83.) During his DOHA hearing, he testified that he only remembers "it from a nightmare because [he] kept reliving the allegation over and over. But what [he] remember[s] is, we were sitting on the couch watching cartoons. I had my arm back around her and my hand on her leg. Like on the side. And I adjusted, because I was uncomfortable, and I accident[ly] touched her vagina." (Tr. at 68.) He stated essentially the same in his police interview. (GE 7 at 15-16.)

Applicant has been under the care of a licensed professional counselor since January of 2023. He sought treatment voluntarily. He began reaching out to the counselor in August of 2022 after a referral from the VA. On his own initiative he walked into the office after being unsuccessful making phone contact. His counselor indicated he had been "very proactive in seeking out treatment." (AE F.) He is described as compliant and working hard in the therapy process and has to date done nothing to violate the terms of his bond. He remains in the community because he is compliant and does not present himself as a risk to the community. His counselor notes, without drawing any conclusions, that Applicant is working hard in therapy to understand and work through his own history of childhood sexual abuse which he encountered at a very young age. (AE F.)

As of June 8, 2023, when the record closed, Applicant's criminal trial remained pending. (GE 7)

Applicant offered the testimony of a work colleague and former Marine. The witness was very credible. He detailed his familiarity of some of the things Applicant had overcome and events in the Applicant's life that had set him back. The witness understood the nature, extent, and seriousness of the conduct and circumstances surrounding the conduct of Applicant. He allowed Applicant to stay with him and his family after Applicant had been removed from his home. He identified the presence of rehabilitative potential in Applicant based on how accountable Applicant had been with all that had happened. (Tr. 98, 102-103.)

### **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 relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

Applicant's admissions, testimony, and the evidence they establish two disqualifying conditions under this guideline: AG ¶ 19(a): inability to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations.

Applicant accrued delinquent consumer debts after a divorce. 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; and

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

AG ¶¶ 20(a) and 20(d) do not apply. Applicant's financial delinquencies are ongoing and unresolved. He has been employed by his sponsor since October 2019 and

had a significant increase in disability income in 2021, as well as a raise. It is well-established that the timing of debt payments is a relevant consideration for a judge to deliberate whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere “to a good faith effort to repay overdue creditors or otherwise resolve debts.” His recent actions to resolve two debts only after receiving the SOR does not receive this mitigating credit. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). He did not establish that he has made a good-faith effort to pay or resolve his debts.

Applicant completed his SCA in April 2021. He testified he addressed two debts, SOR ¶¶ 1.d and 1.e, by enrolling in a deferral program just prior to the hearing. He relies on the fact the credit report he provided no longer shows the debts (SOR ¶¶ 1.a-1.c, 1.f). An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. See ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017). Additionally, he relies on the fact the credit report he provided no longer shows the debts (SOR ¶¶ 1.a-1.c, 1.f). Evidence that debts are no longer contained in credit reports is not sufficient for a finding that they have been resolved. See ISCR Case No. 14-01607 (App. Bd. April 9, 2015). AG ¶ 20(d) does not apply.

#### **Guideline D: Sexual Behavior**

The security concern for sexual behavior is detailed in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually, may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

The following are potentially applicable:

AG ¶ 13(a): sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

AG ¶ 13 (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and

AG ¶ 13 (d) sexual behavior of a public nature or that reflects lack of discretion or judgment.

Applicant was arrested and charged with felony aggravated sexual battery in October 2022. AG ¶ 13(a) applies. In addition, while the criminal trial remains pending, Applicant testified during his hearing that he had touched his stepdaughter's vagina but denied doing so intentionally. He declined to say if his stepdaughter's allegations were false because he has no recollection of the incidents. He did not "believe she would lie about something that happened." (Tr. at 67.) He also did not deny the allegations. AG ¶¶ 13(c) and 13(d) also both apply.

The following mitigating conditions are potentially applicable:

AG ¶ 14(b): the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

AG ¶ 14(c): the behavior no longer serves as a basis for coercion, exploitation, or duress;

AG ¶ 14(d): the sexual behavior is strictly private, consensual, and discreet; and

AG ¶ 14(e): the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Applicant admitted he was arrested and charged with aggravated sexual battery. He acknowledged the sexual behavior, which resulted in his arrest and being charged, both in his police interview, after which he was arrested, and in his testimony. He described his touching of his stepdaughter as unintentional but stated in the hearing and to the police he did not think his stepdaughter would lie. His treatment is recent and ongoing. His admitted actions with his stepdaughter leave him vulnerable to coercion, exploitation, and duress and reflect a lack of judgment. The above mitigating conditions do not apply.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 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 F and D in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

After weighing the disqualifying and mitigating conditions under Guidelines F and D 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 and sexual behavior.

### **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 (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.f: **Against Applicant**

Paragraph 2: Guideline D (Sexual Behavior): **AGAINST APPLICANT**

Subparagraphs 2.a: **Against Applicant**

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale  
Administrative Judge