



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-02447
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

09/28/2023

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the personal conduct and criminal conduct security concerns, but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On January 7, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). The action was taken 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on July 25, 2022 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on March 29, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on March 29, 2023, scheduling the matter for a video teleconference (VTC) hearing on April 26, 2023. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5, without objection. Applicant testified, and he did not submit any documentation or call any witnesses. I granted Department Counsel's motion to amend the SOR, pursuant to ¶ E3.1.17 of the Directive, to conform to the evidence. The SOR was amended to add a security concern under Guideline J (criminal conduct), numbered as ¶ 3.a, as follows: "You were discharged from the U.S. Marine Corps for reasons less than honorable in about January 2023." I provided Applicant with the opportunity to continue the hearing to a later date, to allow him additional time to address the new allegation, but he elected to proceed with the hearing.

I kept the record open until May 10, 2023, to allow the parties to submit documentation. Applicant timely submitted documentation that I marked as Applicant Exhibits (AE) AE A through E and admitted in evidence without objection. Department Counsel submitted a post-hearing brief, with accompanying excerpts of Marine Corps Order 1900.16, which I marked as Hearing Exhibit I. DOHA received the hearing transcript on May 8, 2023.

### **Findings of Fact**

Applicant admitted all the SOR allegations under Guideline F. He stated in response to SOR ¶ 2.a that he did not intentionally falsify his May 2019 security clearance application (SCA), so I have construed his response as a denial of that allegation. He neither admitted nor denied SOR ¶ 3.a, so I have construed his silence as a denial of that allegation. He is 31 years old. As of the date of the hearing, he was not married, and he did not have any children. He graduated from high school in 2011 and subsequently attended college until 2014 but did not earn a degree. He has rented his current residence since approximately December 2022. (Answer; Tr. at 7-8, 22-23, 52-53; GE 1)

Applicant worked for a private company from approximately January 2015 to May 2019. He was subsequently unemployed until approximately September 2020, in preparation for joining the U.S. Marine Corps (USMC). He briefly served in the USMC, from September 2020 to January 2021, when he was administratively discharged for misconduct and received an other than honorable (OTH) discharge, as further discussed below. In approximately 2021, he accepted a position with a DOD contractor contingent on obtaining a security clearance, and that company was sponsoring him for a clearance as of the date of the hearing. He was unemployed for about a month and a half while awaiting the outcome of his clearance, and then he obtained contract work through an employment agency. When he was in between contracts, he had one to two brief periods of unemployment. In 2022, he began working full time for his employer, a private company, as a security system engineer. He has never held a security clearance. (Tr. at 5, 8-10, 23-36, 52-56, 63-70, 76-77, 80; GE 1, 5; AE D)

The SOR alleged, under Guideline F, that Applicant had two delinquent student loans, totaling \$17,034. (SOR ¶¶ 1.a-1.b) It also alleged that he had two delinquent consumer debts, totaling \$22,395 (SOR ¶¶ 1.c, 1.e), and a delinquent \$68 medical account (SOR ¶ 1.d). The Guideline F SOR allegations are established by Applicant's admissions in his Answer; his May 2019 security clearance application (SCA); three credit

bureau reports from May 2019, September 2021, and September 2022; and his August 2019 interview with an authorized DOD background investigator. (Answer; GE 1-5)

Applicant attributed his delinquent debts primarily to his periods of unemployment and underemployment since 2014, when he left college to begin working. His parents assisted him financially during this period. He was unaware that he had any delinquent debts until the investigator asked him about them during his 2019 background interview. Once he became aware of them, he started to try to resolve them. (Tr. at 23-26, 45, 48, 54-56, 58, 63-68, 75-76; GE 1, 5; AE E)

SOR ¶¶ 1.a and 1.b are two federal student loans, in collection for \$8,676 and \$8,358, respectively. Applicant attended college on an athletic scholarship but lost his scholarship after he was injured during his freshman year. His parents bore the cost of his college tuition at a time when they were experiencing financial difficulties. He believed his parents paid for his college education and that his father, with whom he has the same name, obtained these loans to pay for his last years of college. He did not recall signing any loan paperwork, so he was unaware that he had any student loans, or that the student loans were delinquent, until he was informed about them during his background interview. (Tr. at 22-23, 36-42, 58-63; GE 2, 3, 4, 5; AE A, E).

Applicant indicated during his background interview that he had not been contacted to repay any outstanding student loans, but he was willing to repay them. At the hearing, he stated that he understood the loans were his obligation since they were reported on his credit reports. He believed his parents had been paying these loans in accordance with a payment arrangement, and he contributed by providing them with \$50 monthly, until payments on his student loans were deferred during the COVID-19 payment pause. The U.S. Department of Education deferred student loan payments beginning in March 2020, to provide relief to borrowers during the COVID-19 pandemic. See <https://studentaid.gov/announcements-events/covid-19/payment-pause-zero-interest>. He did not provide documentation to corroborate his claims of payment before the COVID-19 payment pause. He understood that he was obligated to pay these loans once the payment pause was lifted, and he intended to do so. These student loans are not reported on the most recent credit bureau report from May 2023. (Tr. at 22-23, 36-42, 58-63; GE 2, 3, 4, 5; AE A, C, E)

SOR ¶ 1.c is an apartment rental account in collection for \$3,924. Applicant lived in this apartment from approximately July 2015 to March 2019, when he broke his lease to move to a different state in pursuit of better job opportunities. He contacted the creditor and settled the debt for \$2,700, which he stated he paid with savings. As of December 2021, this debt was paid. (Tr. at 42-47, 65-66; GE 2, 3, 4, 5; AE B)

SOR ¶ 1.d is a medical account in collection for \$68. Applicant indicated during his background interview that this debt was for treatment he received in approximately September 2015. At the hearing, he stated that he paid this debt but he could not recall when he did so. This debt was not reported on the most recent credit bureau reports from September 2022 and May 2023. (Tr. at 47, 66; GE 2, 3, 5; AE C)

SOR ¶ 1.e is an auto loan in collection for \$18,471. In 2017, Applicant traded his SUV for a used car. He was subsequently unable to make his monthly payments because he signed a high interest auto loan, and he was transitioning between jobs. His car was repossessed in March 2018. He believed that his car was auctioned and sold to cover his outstanding balance. He stated that he had never been contacted regarding any deficiency balance and he did not believe he had one. Although this debt was reported with a zero balance on the most recent credit bureau reports from September 2022 and May 2023, the latter credit bureau report continues to note that this account was charged off for \$18,471. He did not provide documentation of his efforts to address this debt. (Tr. at 47-50, 66, 75-76; GE 2, 3, 4)

The SOR also alleged, under Guideline E, that Applicant intentionally falsified his response to section 26 of his May 2019 SCA, which inquired about his financial delinquencies, when he marked “No” and failed to disclose his delinquent debts in SOR ¶¶ 1.a-1.e. (SOR ¶ 2.a) As previously stated, Applicant indicated during his background interview that he did not list his debts because he was unaware of them. He acknowledged at the hearing that although he was aware the car securing the debt in SOR ¶ 1.e was repossessed, he did not list it because he was confused by the question, since the repossession occurred before he completed the SCA. He did not recall completing the SCA, and it was the first time he had ever completed one. (Tr. at 40, 50-52, 76-80; GE 5)

Applicant’s annual income as of the date of the hearing and since 2022 was approximately \$80,000. His monthly net pay was approximately \$5,500. He anticipated that his monthly net remainder after expenses, to include his monthly rent of \$1,200, would be approximately \$3,200. He uses a budget to manage his finances. He had \$5,500 in savings. He has been working to rebuild his credit. Although he stated that he does not have any other delinquent debts, his most recent credit bureau report from May 2023, which reflects a fair credit score, reports a new account in collection for \$970. He has not received credit counseling. (Tr. at 52-58, 76; AE A. C)

As discussed above, Applicant briefly served in the USMC from September 2020 to January 2021, when he was administratively discharged for misconduct and received an OTH discharge. Records pertaining to his discharge reflect that he was the subject of non-judicial punishment (NJP) in October 2020, for violating Article 90 (willfully disobeying a superior commissioned officer) and Article 91 (insubordinate conduct), when, in September 2020 and November 2020, he refused orders to train, and he refused to execute such orders. He waived an administrative separation board and understood that he received a punitive mark on his record and an OTH discharge. He stated:

I initially entered the Marine Corps with a 0321 contract, which is [reconnaissance] in infantry, which is what I initially signed up for and trained for. And then during the pipeline in my training process, I was then reclassified to the needs of the Marine Corps to aviation tech, an aviation mechanic, essentially, which was an undesirable position for me to have. So I respectfully went to my commanding officer to see if anything could be done to make those changes and if there’s any way that I can either

continue my service in a desirable field or leave the service altogether. It's just not something that I'm -- at the time, I was 29 years old, so I didn't want to be in a path where I didn't have any business being in or wanted or any interest in. So my commanding officer put me on a quote-unquote fast track, which is an NJP board, so I would be administratively discharged. (SOR ¶ 3.a; Tr. at 26-36, 71-75; AE D)

After completing 13 weeks of USMC training, Applicant was awarded Company Honorman for demonstrating exceptional leadership qualities, physical fitness, marksmanship, and overall performance. He does not have any other incidents involving unfavorable or criminal behavior. Numerous character references, to include his father, friends, and several individuals with whom he served in the USMC attested to Applicant's trustworthiness, reliability, and judgment. (AE A, E)

### **Policies**

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(a), 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 Exec. Or.

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 Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline F: Financial Considerations**

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
  
- (c) a history of not meeting financial obligations.

Applicant has a history of not being able to pay his debts. AG ¶¶ 19(a) and 19(c) are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
  
- (b) the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
  
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

Circumstances beyond Applicant's control contributed to his financial problems. Nonetheless, under AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He paid SOR ¶ 1.c in December 2021, before the SOR. The latest credit bureau reports corroborate his claim that he also paid SOR ¶ 1.d. I therefore find those allegations in Applicant's favor.

As stated above, Applicant failed to show that he made any payments toward his delinquent student loans before the COVID-19 payment pause that began in March 2020. He also failed to provide documentation of his efforts to address his auto loan, which continues to be reported as a \$18,471 charged-off account on the most recent credit bureau report from May 2023, despite its zero balance. That credit report also reflects that he has incurred another delinquent debt, in collection for \$970. He has not received financial counseling. While he now has the means to resolve his debts, he needs more time to establish a track record of doing so. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply to SOR ¶¶ 1.a, 1.b, and 1.e.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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.

Applicant credibly testified that he did not deliberately falsify his 2019 SCA. He was unaware of his delinquent debts until he was told about them during his background interview. Although he knew his car was repossessed, he did not list it because he was confused by the question. AG ¶ 16(a) is not established.

## **Guideline J, Criminal Conduct**

AG ¶ 30 expresses the security concern pertaining to criminal conduct as: “[c]riminal activity creates doubt about a person’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. I considered the following relevant: “(e) discharge or dismissal from the Armed Forces for reasons less than ‘Honorable.’” Applicant was administratively discharged for misconduct and he received an OTH discharge from the USMC in January 2021. AG ¶ 31(e) is established.

AG ¶ 32 provides the following relevant mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant accepted responsibility for his OTH discharge. He does not have any other incidents involving unfavorable or criminal behavior. I find that enough time has elapsed since his criminal behavior and without recurrence of criminal activity. AG ¶¶ 32(a) and 32(d) are established.

## **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 Guideline F, Guideline E, and Guideline J 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. I conclude that Applicant mitigated the personal conduct and criminal conduct security concerns, but he did not mitigate the financial considerations security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge