



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



In the matter of:)	
)	
)	ISCR Case No. 22-00260
)	
Applicant for Security Clearance)	

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*

10/03/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines F (financial considerations) and M (use of information technology). Eligibility for access to classified information is denied.

Statement of the Case

On September 26, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and M. Applicant responded to the SOR on October 11, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 3, 2023.

The hearing was scheduled for July 25, 2023, but it was rescheduled at Applicant's request. The hearing convened as rescheduled on September 13, 2023. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and called two witnesses, but he did not submit any documentary evidence.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He has worked for his current employer since June 2022. He attended college for a period, but he has not earned a degree. He is twice divorced. His first marriage ended in 2010 and his second in 2020. He has two children, ages 24 and 18. (Tr. at 28-30, 34-35, 49-50; GE 1)

Applicant worked for a defense contractor from 2014 until he was terminated in November 2019. His company provided him with a smart phone and a computer. He was permitted to use both for personal reasons, but he was not permitted to use them for inappropriate purposes, including viewing and downloading pornography. Applicant viewed pornography at his home on the work laptop from about October to November 2019. He was terminated when it was discovered. (Tr. at 28-30, 52-55; Applicant's response to SOR; GE 1, 2)

Applicant is remorseful for the conduct. He stated that it was his way of dealing with a stressful divorce. He asserted that he has learned a valuable and costly lesson, and the conduct will not be repeated. His current employer is unaware that he was terminated from a previous job for viewing pornography on his work computer. (Tr. at 53-57, 61-62; Applicant's response to SOR; GE 2)

The SOR alleges three delinquent debts totaling about \$48,670 (SOR ¶¶ 1.a-1.c), a delinquent \$212 utility bill (SOR ¶ 1.d), and a child support account that was \$2,781 past due with a \$3,022 balance (SOR ¶ 1.e). Applicant admitted owing the three large debts. He denied owing the utility debt. He admitted owing back child support, but he stated that he was making payments. (Tr. at 39-44; Applicant's response to SOR; GE 2-6)

Applicant attributed his financial problems to his divorce and unemployment after his termination. The COVID-19 pandemic hindered his efforts to find another job. He remained unemployed from about November 2019 to May 2021. (Tr. at 28-32, 34, 36-37; GE 1)

Applicant did not discover he was the father of his younger child until she was about 11 years old. When the court awarded child support, it awarded about \$46,000 in arrearages. Applicant paid about \$26,000 toward the arrearages from his share of the equity in the family home, which was sold as part of the division of assets in his divorce. His pay is being garnished for the child support and arrearages (SOR ¶ 1.e). Now that his daughter is 18, the garnishment will go completely to the arrearages. The balance has been reduced from \$3,053 on the January 2022 credit report, to \$3,022 on the June 2022 credit report, to \$1,492 on the July 2023 credit report. (Tr. at 30-31, 44-48; GE 1-6)

Applicant denied owing the \$212 utility debt (SOR ¶ 1.d). He stated that he never had an account with that utility company. It is listed on all the credit reports in evidence. (Tr. at 44; Applicant's response to SOR; GE 2-6)

Applicant has not made any payments toward the three large debts. He planned to use the money from the sale of the marital home to pay his debts, but that money went to his child support arrearages. He contacted the creditors in 2022 about settling the debts, but his efforts were unsuccessful. His finances appear to be otherwise stable. With his child support ending in the near future, he can use those funds toward paying his delinquent debts. He has not received formal financial counseling. (Tr. at 31, 40, 49-52, 57-58; GE 2-6)

Applicant called two witnesses who attested to his excellent job performance. The witnesses praised his work ethic, judgment, reliability, responsibility, leadership, and trustworthiness. (Tr. at 12-27)

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 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 financial problems, including delinquent debts and child support arrearages. AG ¶¶ 19(a) and 19(c) are applicable.

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

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his financial problems to his divorce and unemployment after he was terminated for viewing pornography on his work computer. His divorce qualifies as an event that was beyond his control. His unemployment was due to his own misconduct and was not beyond his control.

I am giving Applicant the benefit of the doubt about the small utility debt (SOR ¶ 1.d). His child support arrearages (SOR ¶ 1.e) are almost paid. Those allegations are mitigated. See ISCR Case No. 20-03457 (App. Bd. Jun. 15, 2023).

Applicant has not paid any of the three remaining debts alleged in the SOR. He does not have a track record that would enable me to trust that he will pay those debts. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the above mitigating conditions are applicable.

Guideline M, Use of Information Technology

The security concern for use of information technology is set out in AG ¶ 39:

Failure to comply with rules, procedures, guidelines, or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology includes any computer-based, mobile, or wireless device used to create, store, access, process,

manipulate, protect, or move information. This includes any component, whether integrated into a larger system or not, such as hardware, software, or firmware, used to enable or facilitate these operations.

AG ¶ 40 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (e) unauthorized use of any information technology system; and
- (f) introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system when prohibited by rules, procedures, guidelines, or regulations or when otherwise not authorized.

Applicant violated company policy when he viewed pornography on his work laptop. AG ¶¶ 40(e) and 40(f) are applicable.

Conditions that could mitigate the use of information technology systems security concerns are provided under AG ¶ 41. The following are potentially applicable:

- (a) so much time has elapsed since the 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;
- (b) the misuse was minor and done solely in the interest of organizational efficiency and effectiveness;
- (c) the conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification to appropriate personnel; and
- (d) the misuse was due to improper or inadequate training or unclear instructions.

There are no bright-line rules to establish when conduct is recent. It has been almost four years since Applicant used his company laptop to view pornography. He is remorseful for the conduct. He stated that it was his way of dealing with a stressful divorce. He asserted that he has learned a valuable and costly lesson, and the conduct will not be repeated. However, he knew what he did was wrong, he chose to do it anyway, and it cost him his job. His current employer is unaware that he was terminated from his previous job for viewing pornography on his work computer.

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.” See ISCR Case No. 22-00172 at 5 (App. Bd. Sep. 19, 2023) for a discussion on “doubt.” I am unable to

conclude that Applicant's problematic conduct is unlikely to recur. His conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. None of the mitigating conditions are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guidelines F and M in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations and use of information technology 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.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Paragraph 2, Guideline M:	Against Applicant
Subparagraph 2.a:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge