



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



In the matter of:)	
)	
)	ISCR Case No. 22-01336
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

10/18/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations or the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 28, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

On January 2, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 2, 2023, and the hearing was convened as scheduled on July 13, 2023, using video teleconferencing capabilities. The Government offered exhibits

(GE) 1-9, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its disclosure letter as HE II. Applicant testified and offered exhibits (AE) A-L at the hearing, which were admitted with no objections. I held the record open until July 14, 2023, to allow Applicant to submit documentary evidence and he timely submitted AE M, which was admitted with no objection. Applicant's exhibit list was marked as HE III. DOHA received the hearing transcript (Tr.) on July 25, 2023.

Findings of Fact

In his SOR answer, Applicant admitted all of the allegations, with explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 49-year-old employee of a federal contractor working as a simulation technician since February 2020. He holds an associate degree and is a few hours away from earning his bachelor's degree. He is married for the third time (1995-2014, 2015-2019, 2019-present). He has three children from his first marriage and three stepchildren from his current marriage. He pays \$900 monthly in child support for his youngest child, age 16, from his first marriage. (Tr. 4, 6, 24-25; GE 1)

Applicant served in the U.S Army for 25 years. In February 2020, he was medically retired as a master sergeant (E-8) with an honorable discharge. During his years of service, he deployed four times to combat areas. As a result of injuries during combat, he received a 100 percent disability rating from the Department of Veterans Affairs (VA). In June 2019, he was tried at a Special Court-Martial for offenses described below. He pleaded guilty and was sentenced by a military judge to four months confinement and a reduction to the grade of E-7. His one-grade reduction was not approved by the convening authority. He also made restitution in the approximate amount of \$9,000. (Tr. 16, 25; GE 3)

Under Guideline F, the SOR alleged four delinquent accounts (two car debts and two consumer debts) totaling approximately \$27,774. The debts are established by credit reports from February 2017 and August 2021; Applicant's personal subject interview (PSI) with an investigator in November 2021; and his SOR response admissions (SOR ¶¶ 1.a – 1.d). (GE 2, 5-6; SOR Answer)

Under Guideline E, the SOR alleged that Applicant was tried at an Army Special Court-Martial for violations of the Uniform Code of Military Justice (UCMJ) including disobeying a superior officer, making a false official statement, and larceny. He pleaded guilty and was sentenced to four months confinement, and a reduction in grade to E-7. (SOR ¶ 2.a)

Financial Considerations

Applicant testified that he did not pay any of the SOR debts and stated they no longer appear on his credit report because they aged off. During his background interview

in November 2021, he was confronted with the four SOR debts and acknowledged them. He told the investigator that he would “take all necessary steps to resolve these delinquent accounts.” He failed to present any evidence that he has done so. He stated that his contentious divorce from his first wife, which encompassed the years 2014-2016, caused him great financial strain resulting in these delinquencies. These debts were not resolved by Appellant. (Tr. 17, 21; GE 2, 6-9; AE A; SOR Answer)

Applicant testified that his current finances are in good shape. He stated he has no new delinquencies. His July 2023 credit report shows one collection account for \$456, which had a date of last activity in September 2016 (this debt was not alleged in the SOR and will not be considered for disqualification purposes, but it may be considered for credibility, mitigation, and in applying the whole-person factors). Appellant’s and his current wife’s monthly take-home pay total approximately \$14,600. He did not give an estimate of his monthly expenses during his testimony. During his background interview, he told the investigator that he had approximately \$6,500 left over at the end of the month which he would use to begin paying his delinquent debts. He presented no evidence that he has done this. (Tr. 18, 21, 26; GE 2)

Personal Conduct

Applicant admitted to the conduct for which he was tried and convicted at an Army Special Court-Martial in July 2019. Applicant was the staff noncommissioned officer in charge (NCOIC) of a college ROTC detachment. In that role, he had access to and control over the unit’s funds and accounts generated through fund raising. At the time, he was geographically separated from his first wife and three children, who lived in a different state (State A). His wife filed for divorce and Applicant was required to travel to State A for the divorce proceedings and to see his daughters. He did not have the personal funds to do this, so he decided to take money from the ROTC accounts. A subsequent Army investigation determined that he deposited 33 checks from three ROTC accounts into his personal account from about 2013 to 2017. When questioned by investigators, he claimed he had no knowledge of the missing ROTC funds and denied any wrongdoing. (Tr. 19, 21-22, 24; GE 2, 4; AE A; SOR Answer)

Later, Applicant pleaded guilty to disobeying a superior officer, larceny, and making a false official statement. He was sentenced as indicated above. He fully paid restitution in the amount of \$9,050 within the time allowed. He testified that he understood that his actions were a breach of his integrity and the trust reposed in him based upon his military status. (Tr. 22-24; AE A)

Appellant testified that he has had no further employment misconduct since this incident, nor has he had any subsequent arrests by law enforcement. His record shows that in 1994, when he was a private second-class, he was apprehended for shoplifting from an Army and Air Force Exchange facility. His exchange privilege card was confiscated, and he was turned over to his unit. No further information was included (this allegation was not alleged in the SOR and will not be considered for disqualification purposes, but it may be considered for credibility, mitigation, and in applying the whole-person factors). (Tr. 28; GE 4)

Character Evidence and Other Possible Mitigation

Applicant presented character letters from two coworkers and a supervisor. All three attested to his trustworthiness, loyalty, integrity, and reliability. All recommended that he continue to have access to classified information. (AE B-D)

Applicant testified that he teaches firearms safety as an additional job. He also qualified for a Federal Firearms License (FFL), which he claimed required an FBI background check. (Tr. 18)

Applicant received a Post-Traumatic Stress Disorder (PTSD) diagnosis in 2014. His PTSD is related to events that transpired during his combat deployments. (Tr. 25)

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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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

that an 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.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant incurred four delinquent debts. Although facing financial stress due to a pending divorce, he did nothing to address the debts. At one time he was financially unable to pay these debts. More recently he had the ability to pay them, yet he chose not to do so. I find that all of the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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.

Applicant's debts are recent because they are ongoing, and he has not made any payments toward them. His inaction towards resolving his debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's divorce was a condition beyond his control. However, his decision to not pay his debts was a choice he made. Additionally, he did not act responsibly concerning his debts when he decided to allow them to fall off his credit report due to age. AG ¶ 20(b) is not fully applicable.

Applicant presented no evidence of financial counseling. Apparently, his plan to deal with his debts was to do nothing and to let them fall off his credit report. While this may be an appropriate option to take viewed through a financial prism, it does not equate to acting responsibly and in good faith, and it puts into question his reliability, trustworthiness, and good judgment. Applicant's financial problems are not under control. AG ¶¶ 20(c) and 20(d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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. I have considered all of them under AG ¶16 and the following potentially apply:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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; 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;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant was the senior NCOIC who was entrusted with ROTC funds. He violated that trust, over a period of years, by taking funds on multiple occasions from the unit accounts. He stole over \$9,000 of ROTC funds to pay for his personal trips to State A. AG ¶¶ 16(c) and 16(d) are not perfectly applicable because Applicant's conduct is sufficient for an adverse determination under the criminal conduct guideline. However, the general concerns about questionable judgment, untrustworthiness, and a pattern of dishonesty contained in AG ¶¶ 15, 16(c), and 16(d) are established.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

(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.

Stealing over \$9,000 from ROTC funds is not a minor offense. His theft is aggravated by the fact that he was in a senior leadership position and breached the trust that was placed in him. He also was not forthcoming when he was initially questioned about this incident. Additionally, while remote, he has a history of dishonest conduct going back to his apprehension for shoplifting as a young soldier. There was no evidence of counseling. The stressors caused by his divorce may now be over, but that is insufficient to overcome the doubt cast on his reliability, trustworthiness, and judgment by his past larceny and breaches of trust. AG ¶¶ 17(c) and 17(d) do not 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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, VA disability, and favorable character evidence. However, I also considered that he did not attempt to pay his debts or take any other action to resolve his delinquent debts. He has not established a meaningful track record of debt management, and his plan to let his debts fall off his credit report causes me to question his reliability and willingness to resolve his debts in the future. His theft of ROTC funds for which he was responsible in order to affect personal gain also causes me to question his reliability, trustworthiness, and judgment.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude

Applicant has not mitigated the financial considerations or personal conduct 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.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph: 2.a:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge