



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



In the matter of: )  
)  
) ISCR Case No. 22-00328  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2023

**Decision**

GARCIA, Candace Le’i, Administrative Judge:

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

**Statement of the Case**

On April 21, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct), Guideline E (personal conduct), and Guideline F (financial considerations). 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 (Answer) on April 26, 2022, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice on May 1, 2023, scheduling the matter for a video teleconference hearing on June 7, 2023. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1, 2, and 6 and Applicant Exhibits (AE) A through K without objection. Applicant objected to GE 3, 4, and 5 on the basis that they were not the most current copy of his credit report. I overruled Applicant's objection and admitted them in evidence. Applicant testified and did not call witnesses. At Applicant's request, I left the record open until June 21, 2023, for him to submit additional documentation. Applicant timely submitted documentation, which I collectively marked as AE L and admitted without objection. DOHA received the hearing transcript (Tr.) on June 20, 2023.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 3.b-3.c, and 3.e-3.f, and he denied SOR ¶¶ 2.a, 3.a, and 3.d. He is 35 years old, married, and he has two minor children. He graduated from high school in 2006, and he earned a bachelor's degree in network security in 2015. (Answer; Tr. at 7, 10-11, 37; GE 1)

Applicant served in the U.S. military on active duty from 2008 to 2012, and then in the Reserve until early 2021. He received a general discharge under honorable conditions, as further discussed below. As of the date of the hearing, he had worked for his current employer, a DOD contractor, since 2017. He was first granted a security clearance in 2008. He has owned his home since 2016. (Answer; Tr. at 5, 7-9, 33-37; GE 1)

In June 2019, Applicant was arrested and charged with the following five felony offenses: larceny of checks; forgery; uttering; obtain money by false pretense; and identity theft. He deposited a \$5,000 check that he received at his home, but was not made out to him, into one of his bank accounts. He did not spend the money, and it was recouped. He pled guilty to larceny of checks and identity theft in November 2019, and he was sentenced to five years in jail, suspended, and one year of probation. The remaining charges were *nolle prosequi*. He was consequently administratively separated from the Reserve in early 2021, with a general discharge under honorable conditions by reason of misconduct - commission of a serious offense. (SOR ¶¶ 1.a, 2.a; Answer; Tr. at 17-18, 30-31, 33-35, 38-49, 61-66; GE 1-2)

This is Applicant's sole criminal offense. He completed probation without issue. As of the date of the hearing, he was three years into his five-year deferred sentence, which he expected to complete in February 2025. He disclosed this information on his March 2021 security clearance application. (SOR ¶¶ 1.a, 2.a; Answer; Tr. at 17-18, 30-31, 33-35, 38-49, 61-66; GE 1-2)

Applicant stated that he acted rashly, and he could not provide a good explanation for his actions as he was not experiencing financial troubles at the time. He was remorseful, candid, and took responsibility for his poor judgment. He described it as "the worst lapse of character that I've ever had in my life. If, the only time where I've actually done something like this." He stated, "I almost ruined my marriage of, at that time, eight years." He went to counseling, where he learned to slow down his thought process and be more deliberate in his actions. He stated, "I'm trying to not let that define me, and also

trying not to let that be the end all. It ruined my [military] career . . . .” He endeavored to be a positive role model for his children and the children for whom he serves as a sports coach. (Answer; Tr. at 17, 30-31, 38-49, 61-66)

The SOR also alleged that Applicant had five delinquent consumer debts, totaling \$10,292 (SOR ¶¶ 3.b-3.f), and a \$151 delinquent medical debt (SOR ¶ 3.a). Applicant’s delinquent debts are established by his admissions in his Answer; his March 2021 security clearance application (SCA); and credit reports from July 2021, February 2022, August 2022, and May 2023. All of the SOR debts are reported on the July 2021 credit bureau report. SOR ¶¶ 3.a-3.e are reported on the February 2022 credit bureau report. Only SOR ¶ 3.d is reported on the August 2022 and May 2023 credit bureau reports. (Answer; Tr. at 17-18, 31; GE 1, 3-6)

Applicant stated that SOR ¶¶ 3.b-3.f were credit cards that were fraudulently opened in his name, and he did not learn about them until he underwent the security clearance process in 2021 and the background investigator informed him about them. He stated that he has a common name and “my information has been in so many data breaches.” He initially disputed these debts directly with the creditors and with Credit Karma, but then he elected to pay them because he had the financial means to do so, and the dispute process took too long. He stated that he was communicating with the creditor for SOR ¶ 3.d and attempting to recoup the money he paid to resolve that debt because he did not recognize it as his, as he has only one credit card with this same creditor. He also stated that he has had ongoing issues with not receiving medical bills related to one of his child’s frequent visits to various doctors for a medical condition, and that the medical debt in SOR ¶ 3.a was one such bill. He acknowledged that he was previously not the best at monitoring his credit report. (Tr. at 17-18, 31-33, 49-61)

Applicant stated that he paid all the SOR debts prior to receiving the SOR. He provided documentation reflecting that the debts in SOR ¶¶ 3.a-3.c and 3.e-f are resolved as of June 2023; he resolved the debt in SOR ¶ 3.f in 2021; and he disputed the debt in SOR ¶ 3.b in June 2023. (Tr. at 17-18, 31-33, 49-61; AE L)

Applicant stated that his finances are in order, and he does not have any delinquent debts. He and his wife have a budget that they utilize to “account for everything that we can as possible.” It reflects a joint monthly income of \$9,368 and a monthly net remainder of \$3,085 after expenses, to include their monthly mortgage of \$1,590. They have approximately \$30,000 in savings. He also has a health savings account from which he promptly pays his son’s medical bills. He regularly monitors his credit report to keep track of any fraudulent activity. He has not received credit counseling. (Tr. at 18, 31-33, 53, 55, 60-61, 64, 66-68; AE A-B, E-F, H-J, L)

Two family members, close friends, and a colleague of three years, attested to Applicant’s trustworthiness, reliability, and judgment. The former president of the organization for whom Applicant has served as a sports coach also vouched for Applicant’s honesty and commitment. (AE C-D, G, K, L)

## **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 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: “(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;” and “(c) individual is currently on parole or probation.”

Applicant was arrested in 2019 and charged with five felony offenses, and he pled guilty to larceny of checks and identity theft. Although he completed probation, he is still on a deferred sentence until February 2025. AG ¶¶ 31(b) and 31(c) are 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.

I recognize that this is Applicant’s sole criminal offense, four years have since passed, and he is endeavoring to not let this incident define him. He also disclosed this information on his 2021 security clearance application, and he was candid, sincere, and remorseful at the hearing and he accepted responsibility for his actions. I commend his mentorship as a children’s sports coach. However, he is still on a deferred sentence until February 2025 for his felony conviction. As such, I find that not enough time has elapsed since his criminal behavior and without recurrence of criminal activity, and the record evidence still casts doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 32(a) and 32(d) are not established.

### **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:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing . . . .

Applicant displayed untrustworthiness, questionable judgment, and unreliability, which led to his 2019 conviction and general discharge under honorable conditions for misconduct. AG ¶ 16(e)(1) is established.

I have considered all of the mitigating conditions 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; and

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

For the same reasons set forth above in my Guideline J analysis, I find that ¶¶ AG 17(c), 17(d), and 17(e) are not established.

## **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 paying his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

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 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.

Conditions beyond Applicant's control contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He paid the debts in SOR ¶¶ 3.a-3.c and 3.e-f, and he disputed the debt in SOR ¶ 3.b in June 2023. He also paid the debt in SOR ¶ 3.f in 2021, before the SOR. He does not have any other delinquent debts. Although he has not received financial counseling, he and his wife utilize a budget to track their expenses. His finances are under control, and they do not continue to cast doubt on his judgment, trustworthiness, and reliability. I find that ¶¶ 20(a), 20(b), 20(c), and 20(e) 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 Guidelines J, E, and F 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 financial considerations security concerns, but he did not mitigate the criminal conduct and 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 J: Subparagraph 1.a:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline F: Subparagraphs 3.a-3.f:	FOR APPLICANT 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