



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



In the matter of:	)	
	)	
	)	
	)	ISCR Case No. 21-02506
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel P. O’Reilly, Esq., Department Counsel  
For Applicant: *Pro se*

12/26/2023

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**Decision**

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HALE, Charles C., Administrative Judge:

Applicant did not mitigate the security concerns raised by his criminal conduct, financial problems, and personal conduct. His request for a security clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on July 15, 2020. On February 11, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline J (criminal conduct), Guideline F (financial considerations), and Guideline E (personal conduct). 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 SOR on March 2, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 29, 2022, and the case was assigned to me on May 12, 2023. On June 2, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 27, 2023. I convened the hearing on June 27, 2023, as scheduled. Government Exhibits (GE) 1 through 17 and Applicant Exhibits (AE) A through K were admitted in evidence without objection. I kept the record open after the hearing to enable Applicant to submit documentary evidence. He timely submitted six exhibits, which were marked as AE L through Q and admitted without objection. The record closed on July 11, 2023. DOHA received the transcript (Tr.) on July 7, 2023.

### **Findings of Fact**

Applicant is 68 years old. He holds two bachelor's degrees. He earned them from different U.S. universities. He married in 1981 and divorced 2020. The couple separated in 2015 and they initiated divorce proceedings in 2016. There was one child of the marriage, who is now in her thirties and has developmental issues. Applicant remarried a citizen of [Country C] in 2021 and he has a stepchild from this marriage, who recently turned 18. His current wife resides in a property he owns in [Country M] and he spends about half of his time there. His stepchild also resides in his [Country M] property. His current wife is a homemaker and both she and the stepchild are in the process of immigrating to the United States. (Tr. at 20-23.)

Applicant held his first security clearance in the mid-1980s. He held a security clearance for about 30 years when it lapsed in 2018 due to employment issues. His area of work involves negotiating international agreements. His work required international travel. (Tr. at 27-31.)

Applicant admits all of the Guideline J allegations with explanations, which are cross alleged under Guideline E, SOR 3.a. The Guideline J and cross alleged Guideline E allegations are supported by GE 1 – GE 4, GE 13, and GE 15 – GE 17.

SOR 1.a, Applicant was charged in December 2015 with domestic violence and a protective order was issued against him. In his Answer, he admits the allegation and he states an attorney advised his wife to file a protective order against him in retaliation for him filing one against his wife the day prior. (GE 2; Tr. at 46-47, 110.)

SOR 1.b, Applicant was charged in June 2016 with driving under the influence (DUI) and convicted of DUI in August 2016. He cites as mitigation that he has not had another incident in the past six years. (GE 3.; Tr. at 56-57.)

SOR 1.c, Applicant was arrested in November 2016 for driving on a suspended license and pled guilty to the offense in 2017. (GE 4.) He offered an explanation in his Answer that the interlock system was unreliable, so in October 2016 he decided to “take a period of license suspension in its place.” There is no evidence in the record he

requested a license suspension, but he admits that in November 2016 he drove to his condominium to prevent his ex-wife from taking his remaining personal belongings, including roughly \$10,000 in gold and silver bars. (Tr. at 62, 64.) He was subsequently cited for driving on a suspended license. He offered in his Answer that his concern was justified because he later had his ex-wife charged for breaking into the condominium, but he then dropped the charges on the basis he felt sorry for his ex-wife.

SOR 1.d, a warrant for Applicant's arrest was issued in June 2018, in [State N], for felony extradition as a fugitive from another state. He was unaware at the time he was traveling that a warrant had been issued. He had to return to the United States from Country M to accept the charges. The charges were dismissed without leave in July 2018 when he turned himself in to the seeking state. (GE 15 at 4, 8.) As an explanation in his Answer, he denies he fled the country to avoid trial on charges of altering documents related to property in Country M, as his ex-wife claimed, and had only gone to [Country M] to deal with their property in Country M. He acknowledges he was convicted of felony fraud but notes he did receive the property in Country M in divorce. (Tr. at 65-74.)

SOR 1.e, Applicant was charged in 2018 with felony fraud and received probation before judgment. In his Answer he explains he entered an Alford plea and received a \$150 fine, 40 hours of community service, and an agreement the matter would be expunged, which it was. (GE 13 at 1-3; AE I; AE J; and AE K.) He states he would now have contested the charges had he known they would be discoverable in the security clearance application process. (Tr. at 69-70; GE 15 at 1.)

Applicant admits all of the Guideline F allegations with explanations, which are cross alleged under Guideline E, SOR 3.a. The Guideline F and cross alleged Guideline E allegations are supported by GE 1, GE 2, and GE 9 – GE 12.

Under Guideline F, the Government alleged that, as of March 2017, Applicant filed five bankruptcy petitions. He filed two Chapter 13 bankruptcy petitions. The first in March 2017 (SOR 2.b; GE 6), and the second in November 2017 (SOR 2.c; GE 7). The March 2017 filing was dismissed in October 2017 for failing to complete required forms and the November 2017 filing was dismissed for failure to attend a meeting of creditors. He filed three Chapter 7 bankruptcy petitions. The first in November 2003 (SOR 2.a; GE 5) involved about \$90,000 of debt, which was discharged in February 2005. (Tr. at 78.) He noted he was granted a top-secret clearance in 2005 with a bankruptcy on his record. The second in February 2018 (SOR 2.d; GE 8.), which was dismissed in April 2018 for failure to provide the required documents, had issues surrounding the signatures involving the application. (Tr. at 84-90.) The third in November 2018 (SOR 2.e; GE 9), was discharged in February 2019. He stated when got himself "to a point where [he] was eligible for bankruptcy and did do a Chapter 7, which cleared some debts." (Tr. at 80.) For the bankruptcy filings after 2003 (SOR 2.b-SOR 2.e) he offered the same explanation; that when his wife left their home in December 2015 she dumped all financial responsibility, and refused to work, so in order to put themselves in the best position financially he pursued bankruptcy. (Tr. at 80; Answer at 4.) He testified "after the marriage and the relationship was gone, I just said to hell with everything. I'm just going to let

everything go and move on with my life and establish a new life for myself.” (Tr. at 81.)

In two separate court actions Applicant was obligated to pay over \$168,000. The first court action (SOR 2.f) was a judgment in the amount of \$72,600 entered against him for wrongfully converting funds held for his disabled adult daughter. (GE 10 at 3; GE 14 at 19; AE K at 16.) He admits the allegation and acknowledges comingling her accounts with his investment accounts and that he sustained losses he could not cover. He testified he never provided the court with “a sufficient explanation. And I can’t provide a sufficient explanation here today.” (Tr. at 96.) He is saving money to be able to pay off this debt. (Tr. at 96-97, 99-100.) The second court action (SOR 2.g) involves unpaid alimony of \$96,000. (GE 14 at 2, 19.) AE K states his former spouse was granted an amount of \$147,500 and any unpaid amount would be converted into a monetary judgment. (AE K at 16.) The SOR alleges a \$96,000 alimony award. In his Answer he admits the allegation and offers that all “alimony including all back alimony is being faithfully paid in accordance with the court order. (Answer at 5; Tr. at 103.)

Applicant admits SOR 2.h, which declares despite his financial situation alleged in SOR 2.a through 2.g, he provided approximately \$54,000 in financial support to foreign nationals he dated between 2015 and 2020. In his Answer he explains that after he separated, he worked through a marriage service which specialized in placing American men with foreign women. He notes he had two long-term relationships, the second of which resulted in marriage, and that he was working “the majority of time” and could afford to help support these women. (Answer at 6; Tr. at 106.)

Applicant did not admit or deny the Guideline E allegation in his Answer. He did admit to allegations that comprised SOR 3.a. I applied those facts discussed above to the Guideline E allegation, which I consider as a denial based on his nonresponse.

Applicant in his Answer and testimony attributed the allegations in the SOR directly or indirectly to events surrounding his divorce from his wife of 34 years. He described the divorce as a “five-year acrimonious, destructive, intense, bitter, and litigious divorce.” (Tr. at 14.) He insists he has changed his circumstances for the better now that he is no longer in a bad marriage and has happily remarried. (Answer; Tr. at 102.)

### **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**

### **Criminal Conduct**

The security concern under this guideline is set out in AG ¶ 30:

Criminal 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.

Applicant's admissions and the documentary evidence admitted into evidence establish the following disqualifying conditions under AG ¶ 31:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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.

I also have considered the following AG ¶ 32 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's last instance of criminal conduct was in 2018. Despite his claims that his misconduct occurred under the stress of his divorce his conduct demonstrates his willingness to act for his own benefit despite the illegality of his conduct. I conclude he has not shown rehabilitation with respect to his criminal conduct. The security concerns under this guideline are not mitigated.

Subparagraphs 1.a and 1.d are mitigated. SOR 1.a involves a civil matter and SOR 1.d was a procedural matter, which was resolved by the underlying criminal matter.

## **Financial Considerations**

The security concern under this guideline 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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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

Applicant's admissions and the documentary evidence admitted into evidence establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant's bankruptcies in 2003 and 2019 arose from an inability to manage personal finances. He converted his daughter's financial accounts as a result of failed investments on his part. Available information shows that Applicant has been unable to prudently manage his finances in a way that would indicate sound judgment and reliability. I also have considered the following pertinent mitigating conditions under 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;
- (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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply because Applicant's financial problems are recent and ongoing and have recurred over a long period of time. I considered AG ¶ 20(c) in the context of compliance with court orders. While this is positive information, in light of Applicant's history of debt and bankruptcy, it is too soon to conclude that his financial problems are under control.

As to AG ¶ 20(b), Applicant blames his ex-wife spending for the 2003 bankruptcy. His 2019 bankruptcy arose from his divorce and invokes the first prong of that mitigating condition. Full application of this AG ¶ 20(b) is not possible, because he did not act responsibly under the circumstances given his actions involving his daughter's account and financial support to foreign nationals. In conjunction with my consideration of AG ¶ 20(d), I conclude Applicant's repeated resort to bankruptcy protection does not constitute responsible action in response to financial problems. Nor does it support his claim that he initiated prompt, good-faith efforts to pay or otherwise resolve his debts. Applicant did not show that he has embarked on a systematic, reliable effort to improve his financial management in a way that inspires some confidence that he will not experience financial problems in the future given his actions involving his daughter's financial account and his financial support to foreign nationals. Applicant has not mitigated the security concerns about his finances.

## **Personal Conduct**

The Government's information about Applicant's history of criminal conduct and financial considerations also reasonably raised a broader security concern about Applicant's overall judgment, trustworthiness, and reliability thus establishing the security concern articulated, in relevant part, at AG ¶ 15:

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.

More specifically, Applicant's admissions and the Government's evidence requires application of the disqualifying condition at AG ¶ 16(e):

(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;
- (2) while in another country, engaging in any activity that is illegal in that country;



(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

Applicant's repeated instances of criminal conduct over the past seven years, and his lack of discretion in handling his finances and the use of his disabled daughter's financial account as a means to resolve his financial challenges undermine confidence in Applicant's judgment. His conduct was of sufficient concern he was charged with criminal offenses.

Of the mitigating conditions listed at AG ¶ 17, only AG ¶ 17(c) is pertinent to this case:

(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.

As to Applicant's conduct, one instance involved breaching his obligations to his disabled daughter. Additionally, it was related to his long history of poor management of his personal finances, which themselves remain a security concern. Because Applicant did not mitigate the security concerns about his criminal conduct, I conclude he also has not mitigated the related, broader concerns about his poor judgment and inability or unwillingness to abide by rules and procedures. Available information does not show that Applicant's poor decision making will not recur. On balance, he has not mitigated the security concerns under this guideline.

### **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 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, F, and E in my whole-person analysis.

### **Formal Findings**

Formal findings 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:	AGAINST APPLICANT
Subparagraphs 1.b –1.c and 1.e:	Against Applicant
Subparagraphs 1.a and 1.d	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a – 2.f and 2.h:	Against Applicant
Subparagraph 2.g:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

Charles C. Hale  
Administrative Judge