



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



In the matter of:)	
)	
TAYLOR, Jordan E.)	ISCR Case No. 22-02229
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

01/24/2024

Decision

BENSON, Pamela, Administrative Judge:

Applicant mitigated the financial considerations and criminal conduct security concerns. National security eligibility for access to classified information is granted.

Statement of the Case

On January 14, 2022, Applicant completed and signed a Questionnaire for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On January 26, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; *Department of Defense (DOD) Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; as amended, and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DCSA CAS did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Specifically, the SOR set forth security concerns arising under Guidelines F and J. Applicant responded to the SOR and requested a hearing.

On October 12, 2023, DOHA issued a notice of hearing, setting the hearing for November 15, 2023. The Microsoft Teams teleconference hearing was held as scheduled. During the hearing, Department Counsel offered nine Government exhibits (GE) 1-9; Applicant offered 17 exhibits (AE) A-Q; there were no objections; and all proffered exhibits were admitted into evidence. On November 29, 2023, DOHA received a transcript of the hearing.

Findings of Fact

In Applicant's June 2023 SOR response, he admitted, with clarification, all of the SOR allegations under Guideline F. (SOR ¶¶ 1.a-1.d.) He denied SOR ¶ 2.c under Guideline J; he admitted in part and denied in part SOR ¶¶ 2.a and 2.b; and he admitted, with clarification, SOR ¶¶ 2.d-2.g. His admissions are accepted as findings of fact. (SOR response)

Applicant is 30 years old. He has been employed full-time for the past two years by a federal contractor as a stationary engineer. He earns an annual base salary of approximately \$75,000. He currently resides with his fiancée, her four-year-old daughter, and their three-year-old son. His fiancée does not currently work outside the home, and they are expecting a baby in April 2024. This is Applicant's first application for a DOD security clearance. (SOR response; Tr. 16-19, 26; GE 1)

Financial Considerations

The SOR cites four financial allegations based on one event that caused the delinquent debt. The status of these allegations is as follows:

SOR ¶¶ 1.a-1.d allege four delinquent medical accounts that were placed for collection in the total amount of \$3,893. Applicant admitted responsibility for these delinquent medical debts, but he also stated in his SOR response that he had established a repayment plan with the creditor. The circumstances that resulted in these medical expenses stem from an incident in June 2020, when Applicant suffered a medical emergency that required urgent medical care. He was treated at a hospital that was not covered by his medical insurance plan. Applicant tried to get his insurance carrier to pay for the medical expenses, but he was not successful. Based on documentation in the record, he has been making monthly payments of \$125 to the creditor since February 2022, well before the SOR was issued. Beginning in July 2022, he hired a consumer debt relief program and has made approximately \$100 monthly payments as agreed. These debts are being resolved. (SOR response; AE A, B, K; Tr. 19-25)

Criminal Conduct

Applicant was arrested in February 2015 and charged with driving under the influence (DUI) and reckless driving. (SOR ¶ 2.a) He pleaded guilty to reckless driving

and was fined approximately \$1,800. The DUI charge was dismissed with prejudice. His driver's license was suspended from July 2015 to December 2016, and he was granted restrictive driving privileges from about January 2017 to February 2018. Applicant testified that the court consolidated all of his fines for traffic infractions and provided documentation of his current \$100 monthly payment plan with the court. (SOR response; AE C, D, M; GE 1, 5; Tr. 25-28)

SOR ¶ 2.b. alleges that Applicant was arrested in December 2017 for driving on a suspended or revoked license. He pled guilty and was fined approximately \$300. Although Applicant was granted restricted driving privileges, as noted above, he was not aware that a lien had been placed on his driver's license. He resolved the lien and provided proof that he currently has a valid driver's license. (SOR response; AE M, P, Q; Tr. 28-31)

Applicant was charged in April 2018 for operating a motor vehicle without insurance. (SOR ¶ 2.c) He denied this allegation. He stated that he had borrowed a friend's car and after being pulled over by the police, he could not find the owner's insurance card and he was not carrying his own insurance card. He never heard anything else about this matter, and he looked up the charge with the court, but could not find any additional information. There is insufficient evidence in the record of this violation. (SOR response; Tr. 31-32)

SOR ¶ 2.d. alleges that Applicant was charged with speeding in May 2018, and he was found guilty of this offense and was fined \$257. Applicant stated the fine was consolidated with his other fines, and he is current on his monthly payment agreement with the courthouse. (SOR response; Tr. 33-34; AE M)

SOR ¶ 2.e. alleges that Applicant was charged in February 2019 with failure to renew expired registration tags. He was found guilty and ordered to pay \$280. Applicant stated that this fine was paid in full. (SOR response; Tr. 34-35)

Applicant was charged in May 2020 for speeding, no valid operator's license, and operating a motor vehicle without insurance. He was found guilty of speeding, fined \$124, and the remaining two charges were dismissed. (SOR ¶ 2.f) He paid the fine in full. (SOR response; Tr. 35-37)

SOR ¶ 2.g. alleges that Applicant was arrested in September 2021, and charged with felony assault (domestic violence). The charge was subsequently dismissed due to lack of evidence. Applicant stated that his fiancée had been previously diagnosed with bipolar disorder, borderline personality disorder, and post-traumatic stress disorder (PTSD). That evening she had been drinking, going through withdrawal from not taking her medication, and she was depressed. She began deleting photos from her phone. She took Applicant's phone so she could delete his photos, but she discovered he had changed the passcode. She became upset and accused Applicant of being unfaithful. An argument took place, and she pushed and punched him, while he tried to restrain her. The police arrived and his fiancée accused Applicant of choking her. He was arrested. The court subsequently dismissed the charge against him due to lack of evidence. His

fiancée provided a signed, sworn statement that she had lied to police due to her unstable mental health condition at the time. Applicant and his fiancée no longer drink alcohol. (SOR response; Tr. 37-42; AE G; GE 3)

Applicant submitted character reference letters. Three co-workers reported that Applicant is a highly valued asset on the maintenance team. They describe him as honest, reliable, and trustworthy, and endorse he be granted a DOD security clearance. (AE O)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F: Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

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

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

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case: This is indented on the right.

- (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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

The four medical debts totaling \$3,893 were generated in June 2020 after Applicant suffered a medical emergency. Although he carried medical insurance at the time, he was taken to the nearest hospital that was not included in his medical insurance coverage plan. Applicant tried to work with his medical insurance carrier to pay the medical bills, but his efforts were unsuccessful. He initiated a repayment plan with the creditor and has been consistently making monthly payments to resolve these medical debts.

Applicant pays his current financial obligations and has no new delinquent debt. He is willing and able to live within his means, which is reflected in the testimonial and documentary evidence. The June 2020 event was a situation beyond Applicant's control, and I find that he acted responsibly under the circumstances. The incident was completely unexpected and his willingness to satisfy the four medical debts demonstrates his responsibility and good judgment. AG ¶¶ 20(a), 20(b), and 20(d) are applicable. Applicant established mitigation of the financial considerations security concerns.

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concerns pertaining to criminal conduct:

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.

The record evidence established sufficient evidence that Applicant's criminal charges were disqualifying condition under AG ¶ 31:

(a) pattern of minor offenses, any 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.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

(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.

The SOR alleged multiple incidents that are mainly traffic infractions that do not establish a pattern of criminal conduct. Applicant's 2015 arrest for DUI and reckless driving resulted in a conviction of reckless driving. The DUI charge was dismissed with prejudice. This event occurred nine years ago and there are no other repeat violations of this nature. His December 2017 offense for driving on a suspended or revoked license occurred over six years ago. The most recent and troubling arrest for felony assault (domestic violence) occurred in September 2021, over two-and-one-half years ago. The court dismissed the charge against Applicant due to lack of evidence. His fiancée provided a signed statement that she was the cause of the domestic argument and admitted that due to her unstable mental condition, she had lied to the police. There have been no other charges of violent behavior in Applicant's record. I find that enough time has passed to ensure that future criminal conduct is unlikely to recur. Mitigating conditions AG ¶¶ 32 (a) and 32 (d) apply. Applicant established mitigation of the criminal conduct security concerns.

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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines F and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

For the past two years, Applicant has worked full time on a maintenance team. He is 30 years old, engaged, and has two children with another on the way. He experienced a circumstance beyond his control that triggered his financial delinquency. He took responsible action to remedy the problem. He has multiple traffic infractions that are not considered criminal, and his criminal conduct occurred in the distant past, with no evidence of repeated violations. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela Benson
Administrative Judge