



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



In the matter of: )  
)  
) ISCR Case No. 22-01592  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Cynthia Ruckno, Esq., Department Counsel  
For Applicant: *Pro se*

02/02/2024

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**Decision**

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FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), H (Drug Involvement and Substance Misuse), and J (Criminal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on October 4, 2019. On September 1, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Service (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, H, and J. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on September 22, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November

2, 2022, and the case was assigned to me on November 10, 2023. On December 5, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on January 11, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. DOHA received the transcript (Tr.) on January 24, 2024.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations in the SOR except SOR ¶ 1.b, which he denied. His admissions are incorporated in my findings of fact.

Applicant is a 30-year-old aircraft servicer employed by a federal contractor since August 2019. He has never held a security clearance. He has never married. He has a three-year-old son for whom he pays child support.

Applicant graduated from high school in July 2011. He attended college from August 2011 to December 2015, when he received a bachelor's degree. He received student financial aid while in college. He worked part time as a self-employed party promoter from August 2011 to August 2019, selling tickets to parties and social events for a profit. He also worked for a beverage company from July 2011 to September 2017. He worked for a collection agency from October 2017 to January 2018, but he quit because he did not like the work, and he was unemployed until he was hired for his current position. He testified that many of his debts were incurred when he was going to college and trying to support himself. (Tr. 13) He incurred student loans while in college, but he has not started making payments on them. (Tr. 16) The SOR does not allege any delinquent student loans.

In May 2018, Applicant was charged with misdemeanor possession of marijuana. He and two passengers were in his vehicle, and the two passengers were smoking marijuana. Disposition of the charges was deferred, and Applicant was required to attend a substance-abuse class, pay a fine of \$286, and perform 24 hours of community service. After he completed these requirements, the charges were dismissed. (GX 2 at 4; GX 3) He testified that he started smoking marijuana "every couple days" while he was unemployed. (Tr. 44). He stopped using marijuana after the May 2018 incident. (Tr. 47) His drug involvement is alleged in SOR ¶¶ 2.a and 3.a.

The SOR alleges six delinquent debts reflected in credit reports dated February 16, 2022 (GX 5); April 15, 2021 (GX 6); and January 4, 2024 (GX 7). The evidence concerning these debts is summarized below.

SOR ¶ 1.a alleges a default judgment entered in December 2020 for unpaid property taxes on a motor vehicle in the amount \$421. (GX 4 at 1) In Applicant's answer to the SOR, he admitted this debt and stated that he had contacted the tax authority to

establish a payment plan. At the hearing, he testified that he did not know anything about this debt. (Tr. 20-21) The judgment has not been satisfied.

SOR ¶ 1.b alleges a judgment entered against Applicant in March 2019 for \$3,680. Court records reflect that the judgment was for unpaid rent. (GX 4 at 3) At the hearing, Applicant testified that his apartment had flooded and damaged his personal property, and his landlord promised to reimburse him for the damages but did not keep his promise. Applicant testified that he stopped paying rent and was evicted after one month of nonpayment. (Tr. 23) When he was interviewed by a security investigator in November 2019, he said that he moved out when he received an eviction notice. He told the investigator that he did not intend to pay judgment. (GX 2 at 6) However, the court records reflect that the judgment was satisfied by garnishment in February 2021. (GX 4 at 5)

SOR ¶ 1.c alleges an account charged-off for \$14,167. The delinquent amount is the deficiency after a vehicle was repossessed and sold. (GX 5 at 3) Applicant told a security investigator that the debt is valid, but that he did not intend to pay it because he could not afford to. (GX 2 at 6) As of the date of the hearing, he had taken no action to resolve it. (Tr. 25).

SOR ¶ 1.d alleges a credit-card account charged off for \$3,505. Applicant told a security investigator that the creditor offered to settle this debt for \$1,400, but he did not intend to pay it. (GX 4 at 7) As of the date of the hearing, he had taken no action to resolve it. (Tr. 25)

SOR ¶ 1.e alleges an account charged off for \$1,882. Applicant told a security investigator that this debt was the deficiency after a vehicle repossession that preceded the repossession on which the debt alleged in SOR ¶ 1.c was based. He told the investigator that he did not intend to pay it. (GX 4 at 7) At the hearing, he testified that he believed the debt was a personal loan. (Tr. 25) It is unresolved.

SOR ¶ 1.f alleges a medical debt placed for collection of \$369. Applicant told a security investigator that he does not intend to pay it. (GX 4 at 6) At the hearing, he testified that he had numerous unpaid medical debts, but he was unable to specifically identify this debt. (Tr. 25, 34) It is unresolved.

SOR ¶ 1.g alleges a utility bill placed for collection of \$227. He told a security investigator that he would contact the creditor and resolve it. (GX 4 at 6) At the hearing, he testified that he had lived in multiple apartments, and he could not determine which unpaid utility bill was alleged in the SOR. (Tr. 26) It is unresolved.

Applicant currently earns about \$28 per hour, and his take-home pay for each two-week pay period is about \$1,500. (Tr. 19) He testified that he was behind on his rent payments and his car payments at the time of the hearing. (Tr. 26-27) For the past two years, he has been paying \$720 per month for his child's daycare. In November 2023, he was ordered to pay child support of \$846 per month, plus \$100 per month to include his child in his medical insurance. (Tr. 32)

Applicant does not keep current on his financial obligations in part because he does not regularly monitor his mail. He testified that his mail goes to his grandfather's house, and sometimes it is weeks or months before he gets his mail. (Tr. 21-22) He submitted no evidence of financial counseling. He has not disputed any of the debts.

### **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

### Guideline F, 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, the evidence submitted at the hearing, and his declarations to a security investigator that he does not intend to resolve several of his debts establish the following disqualifying conditions

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;  
and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's loss of property due to flooding was a condition largely beyond his control. Some of his medical expenses may have been due to unexpected injuries and illnesses and largely beyond his control, but he did not identify any medical debts that were incurred due to unexpected medical emergencies. Furthermore, he has not acted responsibly. He does not pay attention to his financial situation. He does not regularly monitor his mail. He told a security investigator that he did not intend to pay his delinquent debts.

AG ¶ 20(d) is not established. The judgment alleged in SOR ¶ 1.b is the only debt that has been satisfied. However, payment by involuntary garnishment is not a good-faith effort to resolve a debt. ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011)

### **Guideline H, Drug Involvement and Substance Misuse**

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following mitigating conditions are potentially applicable:

AG ¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence . . . .

Both mitigating conditions are established. Applicant has acknowledged his previous marijuana use, and he stopped using marijuana after the incident in May 2018.

#### **Guideline J, Criminal Conduct**

The 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."

The following disqualifying conditions are relevant:

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

AG ¶ 31(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.

Applicant's admission that he used marijuana in May 2018 establishes these two disqualifying conditions.

The following mitigating conditions are potentially relevant:

AG ¶ 32(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

AG ¶ 32(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.

Both mitigating conditions are established. Applicant has not possessed or used marijuana since May 2018. His drug involvement is mitigated by the passage of time without recurrence.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines F, H, and J in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid and sincere at the hearing, but his approach to his financial problems has been passive and reactive. He submitted no evidence of positive steps to gain control of his financial situation. After weighing the disqualifying and mitigating conditions under Guidelines F, H, and J, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his drug involvement and criminal conduct, but he has not mitigated the security concerns raised by his delinquent debts.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.g:

Against Applicant



Paragraph 2, Guideline H (Drug Involvement)	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J (Criminal Conduct):	FOR APPLICANT
Subparagraph 3.a:	For Applicant

**Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge