



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



In the matter of:)
)
) ISCR Case No. 22-02173
)
Applicant for Security Clearance)

Appearances

For Government: John C. Lynch, Department Counsel
For Applicant: *Pro se*

02/29/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his history of spousal abuse and financial problems. Clearance is denied.

Statement of the Case

On April 27, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Service (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DCSA CAS took the action under Executive Order (EO) 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On May 11, 2023, Applicant answered the SOR, admitting subparagraphs 1.b and 1.c, and denying the remainder. He requested a decision based on the evidence on file instead of a hearing. On September 11, 2023, Department Counsel prepared a file of relevant material (FORM), a brief with 13 attachments (Item 1 – Item 13) supporting the Government’s contention that Applicant should be precluded from having access to classified information. Applicant received the FORM on September 11, 2023, and was notified that he had 30 days to file a reply. On September 22, 2023, he filed a reply. The case was assigned to me on November 9, 2023.

Preliminary Ruling

SOR Paragraph 3.a, as currently drafted, alleges as follows: “That information as set forth in subparagraphs 1.b, 2.a, and 2.b., above.”

I hereby amend this allegation, *sua sponte*, amending Paragraph 3, retaining the same allegations, but separating them into two subparagraphs. Paragraph 3 as amended, now reads as follows:

3.a. That information as set forth in subparagraph 1.b., above; and

3.b. That information as set forth in subparagraphs 2.a and 2.b, above.

Findings of Fact

Applicant is a 48-year-old, single man. He has been married twice previously. Both marriages ended in divorce, most recently in 2019. (Item 3 at 26-27) He is a veteran of the U.S. Air Force, serving from 1995 to 1999. He was discharged honorably. (Response to Interrogatories (Item 3 at 11).He earned a bachelor’s degree in 2016 and a master’s degree in 2018. (Item 3 at 13) He has been working for a defense contractor as a data analyst since 2016. (Item 3 at 14)

The SOR alleges Applicant has been struggling with recurrent financial problems for more than 15 years. In July 2011, he filed for Chapter 7 bankruptcy protection, as alleged in subparagraph 1.k. (Item 1 at 41; Item 1 at 5) In October 2011, the court granted the petition, discharging approximately \$41,000 of delinquent debt. (Item 11)

In the seven years after the bankruptcy discharge, Applicant incurred approximately \$19,000 of additional delinquent debt, including the debts alleged in subparagraphs 1.e, totaling \$2,335; 1.f, totaling \$863; 1.h, totaling \$2,589; and 1.i, totaling \$13,543. (Item 8 at 1-3) Applicant enrolled in a debt-consolidation plan and began making payments through the plan in 2018. (Item 8 at 6) Although he made consistent payments for four years, he never finished the payment plan because he became ensnared in an online romance scam in 2022 in which he was duped into sending multiple payments totaling \$15,000 to an anonymous online person masquerading as a potential love interest. (Item 4 at 2; Item 8 at 6) Because of the scam, two additional accounts, as

alleged in subparagraphs 1.g, and 1.j, totaling approximately \$1,800, that Applicant had opened after the debt consolidation, became delinquent. Both were charged off by the fall of 2022. (Item 5 at 10; Item 6 at 5)

In October 2022, Applicant consolidated all his delinquent SOR debts into another payment plan. (Item 2 at 69, 84, 91) He has been paying \$176 per month towards the plan since November 2022. By September 2023, he had satisfied the debt alleged in subparagraph 1.f. (Response at 3)

In addition to the delinquent commercial debts, the SOR includes delinquent federal and state income tax debts, as alleged in subparagraphs 1.a through 1.d. Specifically, SOR subparagraph 1.a alleges a \$4,524 federal income tax delinquency for tax year 2021 and a \$511 federal income tax delinquency for tax year 2018. (Item 4 at 28) Applicant has been making \$51 monthly payments to the IRS through an installment agreement since June 2019. (Item 4 at 30-35) When he did not satisfy the tax year 2021 delinquency on time, it was incorporated into the installment agreement. Apart from six payments that were dishonored for insufficient funds, Applicant has been making the payments, as agreed. (Item 4 at 31, 46-48) The most recent dishonored payment was in November 2022. (Item 4 at 31)

Subparagraph 1.c alleges that Applicant owes \$1,967 in back state taxes for tax year 2021. It remains outstanding.

SOR subparagraph 1.d alleges that Applicant had two business tax liens entered against him in 2016 and 2020, totaling \$198. This debt constituted a tax on a business that Applicant's ex-wife owned, which he financed. (Item 12) When Applicant discovered these liens, he contacted the municipality and satisfied them. (Item 2 at 2)

Applicant continues to work on paying off his debts. In September 2023, he made payment arrangements to satisfy a \$650 debt that was not listed on the SOR. (Response at 3)

SOR Paragraph 3 alleges two domestic violence allegations. Specifically, on December 17, 2018, Applicant's estranged wife, a foreign national, filed a request for domestic violence protective order, alleging that on December 11, 2018, around 6:00 am in the morning, he assaulted her in the parking lot of his apartment complex. (Item 13 at 8) At the time of the alleged episode, Applicant and his wife had been separated for approximately eight months. That morning, she had gone to his apartment without notifying him in advance to retrieve her immigration-related documents. (Item 13 at 8) When she rang the doorbell, he did not answer it, nor did he invite her in. Shortly after she rang, however, he walked out of the home towards his car. Applicant's estranged wife asked him about the documents that she needed and followed him to his car. She alleged that Applicant, while walking to his car, suddenly became enraged, threatened to kill her, and began strangling her. (Item 13 at 8). After he stopped, he punched her in the face. (Item 13 at 8) After the assault, Applicant's estranged wife alleged that he entered his car and drove away, whereupon she got into her car and "tried to follow him so he could not

get away.” (Item 13 at 8) After losing him in traffic, Applicant’s estranged wife alleged that she then drove towards her immigration attorney’s office, called him from the car and told him what happened. He advised her to return to the scene and call the police. (Item 13 at 8-9)

Applicant’s estranged wife followed the immigration attorney’s advice and returned to Applicant’s apartment complex. At approximately 8:45 am, an apartment complex maintenance worker noticed Applicant’s estranged wife in the parking lot crying, and he called the police. (Item 13 at 17) The police arrived, and after taking Applicant’s wife’s statement, prepared a domestic violence report. In the report, Applicant’s wife was characterized as “upset,” “crying,” “fearful,” and “nervous.” (Item 13 at 14) Moreover, the officer noticed that Applicant’s wife had lacerations on her neck, a swollen right eye, and scrapes and bruises on her palm and lower left arm. (Item 13 at 17) The police then called an ambulance for transport to the local emergency room. (Item 13 at 16) Before the ambulance arrived, the police officer took pictures of the injuries, completed an incident report, including a “strangulation documentation form,” and issued an emergency protective order. (Item 13 at 17, 22, 24)

Applicant’s estranged wife was treated at the hospital and discharged that day. The intake staff noted multiple contusions. (Item 13 at 26) On December 17, 2024, Applicant’s estranged wife filed a request for a domestic violence restraining order against him. (Item 13 at 31) The court originally scheduled the hearing for January 2, 2019, and granted a temporary restraining order pending the hearing. (Item 13 at 31) The case was continued until March 2019. (Item 13 at 52)

On February 2, 2019, Applicant responded to the request for a domestic violence restraining order, denying the allegations, and moving for a restraining order against his estranged wife. (Item 13 at 43) He admits that his estranged wife came to his home the morning of December 11, 2018, at approximately 6:00 am. However, he denies harming or threatening her. Instead, he said that she repeatedly hugged him, begged him for help to prevent her from being deported, and asked him to kiss her. Intent on getting away, Applicant closed his apartment door and ran to his car with his estranged wife in pursuit. (Item 13 at 47) After he entered the car, she then allegedly jumped into his lap before he could close the door, while continuing to exclaim, “help me, baby!” and “kiss me, baby!” (Item 13 at 47) He then lifted and pushed her off him, removing her from the car. He contends that he did not injure her in the process. Applicant then exited the car. Per Applicant, his estranged wife continued to put her arms around him and beg him for help. (Item 13 at 48) Fearing that they were waking up the neighbors, Applicant exhorted his estranged wife to calm down, and suggested that she follow him in her car to a commercial establishment where they could talk in public. (Item 13 at 48) After Applicant and his wife got into their respective vehicles, Applicant intentionally turned in a direction opposite from the street that led to the location where he had asked her to meet, and then intentionally lost her in traffic.

Later that day, Applicant returned home, packed his belongings, and moved to a friend’s house. (Item 13 at 48) He did so because he was terrified that his estranged wife

“and/or her boyfriend could do something” to him. (Item 13 at 48) (Applicant’s discovery of his wife “in an intimate embrace” with a lover several months earlier had prompted him to separate from her. (Item 13 at 46))

On March 2, 2019, the local court held a hearing regarding the competing protective order motions. At the conclusion of the hearing, the court ruled against Applicant’s estranged wife, concluding that she did not meet her burden of proving by a preponderance of evidence that abuse occurred within the meaning of the state statute, or that she was placed in a reasonable fear of imminent bodily harm by any actions of Applicant. (Item 13 at 54) The court reached this conclusion “despite the injuries admittedly present” on Applicant’s estranged wife and finding ‘the testimony of [Applicant] to be sufficiently more credible than the testimony of [the estranged wife] to preclude [her] from meeting her burden of proof.” (Item 13 at 54) The local court’s decision constitutes the evidence Applicant offered in support of his denial of the allegations set forth in SOR Paragraph 2, and cross-alleged in SOR Paragraph 3, that he choked and punched his wife.

In Applicant’s reply to the FORM, he stated that his estranged wife was not injured when he left her on the morning of December 11, 2018, and that “whether or how she received those bruises or lacerations was not from me.” (Reply at 1) Contrary to his earlier statement when he suggested that she follow him to a nearby commercial establishment where they could talk without disrupting the neighbors, Applicant, in his reply, stated that he left the apartment complex to go directly to work. (Reply at 1)

During Applicant’s estranged wife’s interview with the police officer who filed the December 2018 incident report, she told him that the episode where Applicant choked her was not the first time he physically abused her. Specifically, one morning in March 2018, he punched her on the shoulder “a couple of times” after she would not get out of bed to move her car away from his car so that he could drive to work, as alleged in subparagraph 2.b. (Item 13 at 9)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline F, Financial Considerations

The security concerns under this guideline are set forth 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.

Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s federal and state income tax delinquencies trigger the application of AG ¶ 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.”

Applicant satisfied two business tax liens, as alleged in subparagraph 1.d, as well as a debt, totaling \$863, as alleged in subparagraph 1.f. I resolve these allegations in his favor.

Applicant has been paying his delinquencies through a payment plan since November 2022. Conversely, he never finished satisfying the debt in a plan established earlier in 2018. Further, he incurred all these debts approximately seven years after financial problems compelled him to obtain a discharge of \$41,000 of debts through the Chapter 7 bankruptcy process. Under these circumstances, AG ¶ 20(d), “the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies, but has limited probative value.

As for Applicant’s remaining tax delinquencies, he has been making payments towards the satisfaction of his federal income tax debts since June 2019. However,

despite the low monthly payments required to satisfy the federal tax debts, six were dishonored for insufficient funds. Moreover, Applicant has yet to develop a plan to pay his state income tax delinquencies. AG ¶ 20(g), “the individual has made arrangements with the appropriate tax authorities to file or pay the amount owed and is in compliance with those arrangements,” does not apply.

Given the recurrent nature of Applicant’s financial problems, I conclude that it is too soon to conclude that he has mitigated the security concern. In reaching this conclusion, I also considered his irresponsible decision to spend \$15,000, more than half the balance of the SOR delinquencies, on someone whom he was attempting to meet online.

Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness, [and] by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.” (AG ¶ 30) The FORM includes evidence that Applicant choked and beat his wife on December 11, 2018, and punched her on the arm approximately six months earlier in March 2018. Record evidence includes a police report, a victim statement, emergency room hospital records, a strangulation documentation form, and an emergency protective order.

This information on file is sufficient to trigger the application of AG ¶ 31(b), “evidence (including, but not limited to, a credible allegation, admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.”

Applicant denies that he has ever physically abused his ex-wife. In support thereof, he, raises, in essence, a *res judicata* argument, contending that his ex-wife’s abuse allegations are unsubstantiated because the state court reached this conclusion when it denied his ex-wife’s petition for a domestic violence restraining order.

The concept of *res judicata* does not apply in ISCR cases. (ISCR Case No. 14-00908 at 5 (App. Bd. March 19, 2015) Instead, regardless of the earlier decisions in other forums, DOHA judges have “an independent duty to evaluate the evidence, to make findings, and to draw conclusions therefrom.” (*Id.*) Consistent with my duty to evaluate the facts independent of the decision involving Applicant’s ex-wife’s protective order motion, I conclude that Applicant choked and punched his wife on December 11, 2018, as alleged in the SOR. Specifically, Applicant’s ex-wife’s injuries were corroborated by both police and on-the-scene medical personnel within three hours of her encounter with Applicant in the morning of December 11, 2018, and she did not have these injuries before the encounter with Applicant. Moreover, emergency room medical records indicated that Applicant’s ex-wife’s body was bruised and lacerated in the respective areas that she claimed that he hit and choked her. Lastly, Applicant, in his reply to the FORM, stated that after the parking lot encounter with his estranged wife ended, he left the apartment complex to go directly to work, whereas, in his statement in response to her motion for a

protective order, the parking lot encounter ended when he suggested that she follow him to a nearby commercial establishment where they could talk without disrupting the neighbors. This contradiction fatally taints his credibility, and leads me to sustain the allegation, set forth in subparagraph 2.b, that he hit his wife previously six months before the December 2018 assault, contrary to his denial.

Applicant's physical abuse of his spouse occurred nearly six years ago. In addition, such conduct has not recurred, and is unlikely to recur, as Applicant and his wife are divorced. This raises the issue of whether the mitigating condition set forth in 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," applies. Given the brutality of Applicant's assault and his failure to admit it, I conclude that AG ¶ 32(a) does not apply.

Guideline E, Personal Conduct

Under this guideline, "[c]onduct 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." (AG ¶ 15)

Applicant's physical abuse of his then wife is disqualifying under this guideline for the same reasons as discussed above under the criminal conduct security concern. I resolve subparagraph 3.b against Applicant. As for the issue of the dishonored electronic payments, as alleged in subparagraph 1.b, this is indicative of a financial problem rather than a personal conduct concern. I resolve subparagraph 3.a for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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 considered the whole-person concept factors in my analysis of the disqualifying and mitigating conclusions and they do not warrant a favorable conclusion.

Formal Findings

Formal findings for 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.k:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge