



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



In the matter of:)	
)	
)	ISCR Case No. 22-01337
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

03/06/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines E (personal conduct) and F (financial considerations). Eligibility for access to classified information is granted.

Statement of the Case

On September 8, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and F. Applicant responded to the SOR on September 20, 2022, and requested a hearing before an administrative judge. The case was assigned to me on August 23, 2023.

The hearing convened as scheduled on October 5, 2023. Government Exhibits (GE) 1 through 12 were admitted in evidence without objection. Applicant testified but he did not submit any documentary evidence. The three documents that were attached to his SOR response were admitted without objection as Applicant Exhibits (AE) A through C. The record was held open for Applicant to submit additional documentary evidence. He did not submit any additional documents, but his emails contained factual information. Those emails are collectively marked AE D and admitted without objection.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He has worked for his current employer since 2019. He served on active duty in the U.S. military from 2001 until he was honorably discharged in 2013. He has a General Educational Development (GED) high school equivalency diploma. He married in 2001. He and his ex-wife separated in 2003 but did not divorce until about 2019. He lives with his girlfriend. He has two adult children. (Tr. at 27, 40-41, 44-45; Applicant's response to SOR; GE 1, 11)

Applicant was arrested in November 2005 and charged with the felony offense of hindering apprehension/prosecution of a known felon. He pleaded guilty to the misdemeanor charge of hindering apprehension or prosecution. He was sentenced in January 2007 in a deferred adjudication to probation for six months, a fine, and court costs. He stated that the offense was related to the police's attempt to apprehend his then girlfriend's brother. (Tr. at 28; Applicant's response to SOR; GE 6, 8, 9, 11)

Applicant was arrested in November 2007 and charged with driving while intoxicated (DWI). He pleaded no contest or *nolo contendere* to DWI in September 2009. He was sentenced to confinement for three days, a fine, and court costs. The 2005 and 2007 offenses both occurred in the vicinity of the military post where Applicant was stationed. The military was notified of both arrests. He attended the military's Alcohol and Substance Abuse Program on his military installation after the DWI arrest. He stated that he now drinks responsibly and does not drink and drive. He has not been arrested or charged with anything since the 2007 DWI. (Tr. at 28, 37-38; Applicant's response to SOR; GE 6-9, 11)

Applicant submitted a Declaration for Federal Employment on March 30, 2015. He answered "No" to the question that asked: "During the last 7 years, have you been convicted, been imprisoned, been on probation, or been on parole? (Includes felonies, firearms or explosives violations, misdemeanors, and all other offenses.)" Applicant was arrested for DWI in 2007, which was beyond the seven-year period of the question, but his conviction in September 2009 should have been reported. Applicant denied intentionally providing false information on the declaration. He thought the crime was beyond the reporting period. (Tr. at 29-30; Applicant's response to SOR; GE 10, 11)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in October 2020. He answered "No" to all the police record questions under Section 22. The first block of questions asked for information that occurred "**In the last seven (7) years.**" The second block of questions asked for information that "**EVER**" happened, including questions that asked:

Have you **EVER** been charged with any felony offense? (Include those under the Uniform Code of Military Justice and non-military/ civilian felony offenses)

Have you **EVER** been charged with an offense involving alcohol or drugs? (GE 1)

The 2005 felony charge of hinder apprehension/prosecution of a known felon should have been reported even if it resulted in a deferred adjudication of a misdemeanor offense. The 2007 DWI charge should also have been reported. Applicant denied intentionally providing false information on the SF 86. He stated he misread the questions and thought he was only supposed to go back ten years. He stated that he would not lie about his past because "I know you guys know more about me than I do, so I wasn't trying to hide nothing. I just don't remember everything." (Tr. at 30-35; Applicant's response to SOR)

The SOR alleges three delinquent debts for \$19,547 (SOR ¶ 1.a), \$2,978 (SOR ¶ 1.b), and \$645 (SOR ¶ 1.c). The debts are listed on one or more credit reports from November 2020, December 2021, August 2022, and September 2023.

All four credit reports list the for \$19,547 charged-off joint auto loan alleged in SOR ¶ 1.a. The last payment was made in July 2017. The two most recent credit reports include the comment: "Consumer Disputes After Resolution." Applicant denied responsibility for the debt. (Applicant's response to SOR; GE 2-4, 12)

Applicant stated that he did not report this debt on the Questionnaire for National Security Positions (SF 86) he submitted in October 2020 because he was not responsible for the loan. He discussed the loan during his background interview in December 2020. The unauthenticated, and therefore less reliable, report of investigation of Applicant's background interview indicated that Applicant told the investigator that he discovered the loan when he applied for a mortgage about a month after he submitted the SF 86. He stated that his ex-wife took the loan out partially in his name without his consent or knowledge, and he did not cosign for the loan. He stated that he planned to contact his ex-wife and ask her to pay the debt, which he did not expect her to do. He also told the investigator that he had been separated from his ex-wife for a very long time before his divorce. He stated that if she did not pay the debt, he would contact the creditor and set up a settlement arrangement for the debt. He stated that he intended to address the debt sometime in 2021. (Applicant's response to SOR; GE 11)

Applicant testified at his hearing that it was an ex-girlfriend who presumably took out the loan, not his ex-wife. He indicated that after they broke up, the ex-girlfriend moved to a state where he never lived. His credit report listed that an address in that state was reported in November 2018. The credit report also listed that Applicant had another auto loan in his name alone from September 2016 through February 2018. He submitted a letter from the auto financing company purportedly to show that he did not have an account with the company. However, the September 2022 response from the company indicated they were responding to Applicant's inquiry dated September 20, 2022, "requesting the removal of an [auto financing company] credit inquiry from [his] credit report issued by one or more credit reporting agencies." The company indicated it was unable to locate any information about Applicant in their records and requested additional information such as his full name and the last four digits of his Social Security number. Applicant never responded to the request for additional information. He stated that he read the letter as indicating the company was unable to locate his account. (Tr. at 15-26, 46; Applicant's response to SOR; GE 2-5, 12; AE A)

Applicant contacted the auto financing company after the hearing. He wrote in his email, "I called [auto financing company] and now they do have my personal information on the account. So I now [sic] I will have to try and figure that out." (AE D)

SOR ¶ 1.b alleges a \$2,978 delinquent debt on the financing for leased furniture. Credit reports from November 2020 and December 2021 indicate the charged-off account was assigned in November 2013 for about \$5,255, with the last activity in February 2015 or September 2015, and a balance of \$2,978. Applicant settled the debt with a \$884 payment received on or before September 26, 2022, which is after he received the SOR. (Applicant's response to SOR; GE 4, 5, 11; AE B)

SOR ¶ 1.c alleges a \$645 delinquent debt for a department store credit card. A credit report from November 2020 indicates the charged-off account was assigned in May 2013; it had a balance of \$645; and the last activity was in March 2017. Applicant paid the debt in full on August 24, 2021, which was before he received the SOR, but after he was questioned about the debt during his background investigation. (Applicant's response to SOR; GE 4, 5, 11; AE C)

Applicant's finances are otherwise in reasonable shape. He received financial classes when he was in the military, but no formal financial counseling. He and his girlfriend share their expenses, and his children do not live at home. The credit reports indicate he paid a small collection account in November 2016. Excepting the SOR debts, he has not accrued any additional delinquent debts since 2016. (Tr. at 28, 38-44; GE 3-5, 11, 12)

Applicant answered "No" to all the financial questions under Section 26 of his October 2020 SF 86, which included the following:

In the last seven (7) years, [have] you defaulted on any type of loan? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

In the last seven (7) years, [have] you had bills or debts turned over to a collection agency? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

In the last seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

In the last seven (7) years, [have you] been over 120 days delinquent on any debt not previously entered? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)

[Are you] currently over 120 days delinquent on any debt? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor)¹

Applicant discussed the three SOR debts during his background interview in December 2020. He told the investigator that he discovered the debts when he applied for a mortgage about a month after he submitted the SF 86. (GE 11)

Applicant denied intentionally providing false information on the SF 86. He stated he was not responsible for the defaulted auto loan, and he lost track of the other two debts. (Tr. at 33-34; Applicant's response to SOR; GE 1, 11)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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(c), 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.

¹ The SOR did not allege that Applicant falsified the first and last two questions.

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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(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's criminal charges from 2005 (SOR ¶ 2.a) and 2007 (SOR ¶ 2.b) were cross-alleged as personal conduct. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

SOR ¶ 2.c alleges that Applicant deliberately falsified his March 2015 Declaration for Federal Employment when he answered "No" to the question that asked: "During the last 7 years, have you been convicted, been imprisoned, been on probation, or been on parole? (Includes felonies, firearms or explosives violations, misdemeanors, and all other offenses.)" Applicant was arrested for DWI in 2007, which was beyond the seven-year period, but his conviction in September 2009 should have been reported. Applicant denied intentionally providing false information on the declaration. He stated he thought the crime was beyond the reporting period.

SOR ¶ 2.d alleges that Applicant deliberately falsified his October 2020 SF 86 when he failed to report his 2005 felony charge under the question that asked, "Have you **EVER** been charged with any felony offense?" Applicant was charged with a felony, but his guilty plea in a deferred adjudication was to a misdemeanor charge of hindering apprehension or prosecution. He was sentenced in January 2007 to probation for six months, a fine, and court costs.

SOR ¶ 2.d also alleges that Applicant deliberately falsified his October 2020 SF 86 when he failed to report his 2007 DWI that resulted in a 2009 conviction under the question that asked, "Have you **EVER** been charged with an offense involving alcohol or drugs?" Applicant denied intentionally falsifying the SF 86. He stated that he misread the question to only going back ten years.

SOR ¶ 2.e alleges that Applicant deliberately falsified his October 2020 SF 86 when he failed to report the three delinquent debts alleged in the SOR under the following specific questions:

In the past seven (7) years, [have] you had bills or debts turned over to a collection agency? and

In the past seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).

It is unclear why those specific questions were alleged when there were other questions that were more appropriate. For a finding of an intentional falsification under

the first question, the Government must prove by substantial evidence that Applicant had one or more debts that were turned over to a collection agency; that he knew that he had a debt that was turned over to a collection agency; and that he intentionally failed to report that he had a debt that was turned over to a collection agency.

To find an intentional falsification under the second question, the Government must prove by substantial evidence that Applicant had one or more accounts that were suspended, charged off, or cancelled for failing to pay as agreed; that he knew that he had such an account; and that he intentionally failed to report that he had such an account.

Applicant had delinquent debts when he submitted the SF 86. However, the Government did not prove that any of the alleged debts were turned over to a collection agency. The Government also did not prove that when Applicant submitted the SF 86, he knew that he had an account that was suspended, charged off, or cancelled for failing to pay as agreed. There is insufficient evidence to establish that Applicant intentionally falsified the two specific questions alleged in SOR ¶ 2.e. AG ¶ 16(a) is not applicable to those questions. SOR ¶ 2.e is concluded for Applicant.

Having considered all the evidence, including Applicant's age, education, experience, other factors, and credible testimony, I am not convinced by substantial evidence that he deliberately falsified the 2015 Declaration for Federal Employment or the 2020 SF 86 (including financial questions that were not alleged in the SOR). I found Applicant to be unsophisticated but honest. I note the criminal offenses were well known to the military when they occurred and did not prevent him from serving an additional six years after the DWI arrest and receiving an honorable discharge. I believe his testimony that he would not lie about his past because "I know you guys know more about me than I do, so I wasn't trying to hide nothing. I just don't remember everything." AG ¶ 16(a) is not applicable to any of the questions on the 2015 and 2020 documents. SOR ¶¶ 2.c and 2.d are concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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.

Applicant's last criminal offense occurred in 2007, more than 16 years ago. He has since been honorably discharged and steadily employed. I find the conduct is unlikely to recur, and it no longer casts doubt on his reliability, trustworthiness, or good judgment. The above mitigating conditions are applicable.

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 financial problems, including delinquent debts. AG ¶¶ 19(a) and 19(c) are applicable.

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 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;

(d) 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.

Applicant paid two of the SOR debts in August 2021 and September 2022, which was after they were discussed during his background interview. I found his testimony that he does not believe he is responsible for the joint auto loan to be credible. It was corroborated in part by the credit report that lists an address in a state where he never lived, but where his ex-girlfriend moved after they broke up. I also believe his testimony that he thought the letter from the auto financing company was proof that he was not responsible for the loan. Applicant found out during and after the hearing that the letter does not mean what he thought it meant. It is unclear how he will proceed, but the debt is old and will shortly fall off his credit report.

Applicant's finances are otherwise in reasonable shape. He received financial classes when he was in the military, but no formal financial counseling. He and his girlfriend share their expenses, and his children do not live at home. Credit reports indicate he paid a small collection account in November 2016. Excepting the SOR debts, he has not accrued any additional delinquent debts since 2016. Additional financial problems are unlikely to recur.

Applicant does not present a perfect case in mitigation, but perfection is not required. A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). Applicant's finances do not cast doubt on his current judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about Applicant's finances are mitigated.

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 have incorporated my comments under Guidelines E and F in my whole-person analysis. I also considered Applicant's honorable military service.

Appendix C of the adjudicative guidelines gives me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded the issues are completely mitigated, and it is unnecessary to further monitor Applicant's finances.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct and financial considerations 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 F:	For Applicant
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.e:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge