



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



In the matter of: )  
)  
) ISCR Case No. 23-00563  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

03/19/2024

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the personal conduct security concern but he did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On March 22, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DoD on June 8, 2017.

Applicant responded to the SOR (Answer) on April 4, 2023, and requested a hearing before an administrative judge. The case was assigned to me on November 7, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on November 16, 2023, scheduling the matter for a hearing on December 12, 2023.

I convened the hearing as scheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 9 and Applicant Exhibits (AE) A through I without objection.

Applicant testified and he did not call any witnesses. At Applicant's request, I kept the record open until January 5, 2024, to enable him to submit additional documentation. He timely submitted documents that I collectively marked as AE J and admitted without objection. DOHA received the hearing transcript (Tr.) on December 26, 2023.

### **SOR Amendment**

At the hearing, I granted Department Counsel's motion to amend the SOR, pursuant to ¶ E3.1.17 of the Directive, to conform to the evidence. The SOR was amended to add a security concern under Guideline E (personal conduct), numbered as ¶ 2.a, as follows:

2.a. You were terminated from your employment with [former employer] in about February 2021 for improperly disposing of company IT equipment. You failed to timely report damage to the equipment to your employer and disposed of it without their knowledge or permission.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a-1.l and 2.a. As he neither admitted nor denied SOR ¶¶ 1.m-1.n, I am construing his response as a denial of those allegations. He is 34 years old, married, and he has a 9-year-old son. He graduated from high school in June 2008. He has attended six colleges at various times since 2010 but has not yet earned a degree. He has gained information technology certifications. (Tr. 7, 73, 86, 88-89; GE 1, 9; AE J)

Applicant enlisted in the U.S. military in July 2008. He deployed to Afghanistan from 2010 to 2011 and he was honorably discharged in April 2012. He was subsequently unemployed until November 2012. He then worked for two non-defense contractors until August 2014, when he was unemployed a second time until November 2014. He then worked for various defense contractors until March 2018. From March 2018 to June 2018, he worked for a non-defense contractor assigned to one client and then from July 2018 to September 2018, to a second client. He was let go from the former client for not being up to speed with security incident classifications. (Tr. 5, 7-9, 34, 72-94, 99-103, 106-125; GE 1-2, 8-9; AE A, J)

Applicant then worked for five defense contractors from September 2018 to February 2021, of whom he was fired by three. In October 2018, he was fired for lateness; in September 2019, he was fired for excessive tardiness; and in February 2021, he was fired for improper disposal of company equipment, as further discussed below. He was unemployed a third time from February 2021 to May 2021. He worked for another defense contractor from May 2021 until he was laid off for not performing at a senior level in July 2021. He was unemployed a fourth time until September 2021. He then worked for another defense contractor until April 2023. Although the record is unclear, it appears he was unemployed a fifth time from April 2023 to November 2023. Since then, he has worked as a network engineer for his current employer (E1), a defense contractor. He also accepted a position with another employer (E2) as a senior network engineer in

support of a Department of Homeland Security contract. He expected to begin employment with E2 in mid-December 2023 and anticipated working for both E1 and E2 simultaneously. He was granted a security clearance in 2008. (Tr. 5, 7-9, 34, 64, 72-94, 99-103, 106-125; GE 1-2, 8-9; AE A, J)

In February 2021, Applicant was fired by his then-employer, a defense contractor, for improperly disposing a company hard drive and laptop, in violation of company policy. He was working from home during the COVID-19 pandemic in the fall of 2020 and he spilled water on his company laptop, causing damage to the hard drive. He took the hard drive to a repair shop to have it wiped clean at his expense, to ensure there was no leakage of company proprietary information, and then he discarded the equipment. He did not inform his manager of his actions until a few weeks later, when a general audit was conducted of company assets. His manager told him to contact security, follow proper procedures in the future, and he would be issued another laptop. He was fired instead. He was not issued a warning, reprimand, or violation. He acknowledged that he panicked, had a lapse in judgment, and made the wrong choice to destroy company property rather than returning it to his employer. He admitted that he was hesitant to have the value of the laptop deducted from his income. He maintained that there was no proprietary, sensitive, or classified information on the equipment. This was an isolated incident, he understands the importance of following rules and regulations, and he learned his lesson. (SOR ¶ 2.a) (Tr. 76-82, 102-103, 113-122; GE 1, 9)

The SOR alleged that Applicant owed \$1,744 and \$8,991, respectively, in delinquent federal and state income taxes. (SOR ¶¶ 1.a-1.b) It also alleged that he had nine delinquent consumer debts totaling \$40,796 (SOR ¶¶ 1.c-1.e, 1.h, 1.j-1.n) and three delinquent medical debts totaling \$943 (SOR ¶¶ 1.f-1.g, 1.i). The SOR allegations are established by his admissions in his Answer; his July 2021 security clearance application (SCA); his August 2021 and October 2021 interviews with an authorized DoD background investigator; his October 2022 response to interrogatories; and credit bureau reports (CBR) from July 2021, May 2022, and January 2023. (GE 1, 3-6, 9)

Applicant has a history of delinquent debts, as evidenced by his February 2016 SCA, February 2016 CBR, and September 2016 background interview. (GE 2, 7-8) He attributes his delinquent debts primarily to his periods of unemployment and being the sole provider for his family on a minimal income. He also totaled his car in a January 2019 car accident, which affected his ability to timely report to work, that then led to two terminations, as previously discussed. He acknowledged that he also did not manage his finances well. (Tr. 70-72, 75-76, 86, 94-98, 100, 102; GE 1, 3, 8-9)

Applicant incurred \$1,744 in delinquent federal taxes. (SOR ¶ 1.a) IRS tax account transcripts from August 2022 reflect that he filed his federal income tax returns for tax years (TY) 2020 and 2021 in April 2021 and April 2022, respectively; he was issued a \$3,182 refund for TY 2020 and a credit of \$7,006 was transferred from TY 2021 to his "1040 201912"; and he had a zero balance for TY 2020 and 2021. After he filed these income tax returns, the Internal Revenue Service (IRS) amended them and notified him that he owed \$5,000 for those tax years. Documentation reflects that he first entered an installment agreement with the IRS in April 2023, consisting of monthly payments of \$150.

He made two such payments in April 2023 and August 2023, but he did not make any further payments because he could not afford to do so. He entered another installment agreement with the IRS in December 2023, consisting of monthly payments of \$150 beginning in January 2024. (Tr. 29-34, 96-97; GE 3, 9; AE D, G)

Applicant also incurred \$8,991 in delinquent state taxes. (SOR ¶ 1.b) State income tax returns for TY 2020 and 2021 reflect that he owed \$5,925 and \$1,168, respectively. He incurred these tax debts because taxes were not being taken out of his paycheck for the correct state jurisdiction. He was notified of his outstanding state taxes in July 2021. Documentation reflects that he first entered an installment agreement with the state tax authority in April 2023, consisting of monthly payments of \$347. He stated that he made approximately three payments in accordance with that agreement. Documentation reflects that he entered another payment arrangement with the state tax authority in December 2023, for outstanding state taxes totaling \$10,214, in 30 monthly payments of \$372. (Tr. 35-39, 97-98; GE 3, 9; AE D, G)

SOR ¶ 1.c is an auto loan in collection for \$10,967. Applicant obtained this loan to purchase a new car in 2017. After less than a year, his car was repossessed because he could no longer afford to make his monthly car payments. He owed a deficiency balance on the loan. He contacted the creditor in August 2023 and made a payment arrangement of \$639 monthly to pay this debt, but he had not yet made any payments as of the date of the hearing. (Tr. 39-43, 105; GE 3-6, 9)

SOR ¶ 1.d is a personal loan in collection for \$1,062. Applicant obtained this loan in 2019 to pay his rent. He made one payment soon after obtaining the loan. He contacted the creditor in early 2023, before he received the SOR, to resolve the debt. Documentation reflects that he paid this debt in January 2024. (Tr. 43-46; GE 1, 3-6, 9; AE J)

SOR ¶ 1.e is an account in collection for \$688. Applicant believed this was his spouse's account and he was only an authorized user. He stated that she paid this debt in 2022, but he did not provide documentation to corroborate his claim. CBRs from May 2022 and January 2023 report this debt as an individual credit account in Applicant's name. (Tr. 46-49, 99; GE 3-5; AE I)

SOR ¶¶ 1.f, 1.g, and 1.i are three medical debts in collection with the same creditor for \$640, \$186, and \$117, respectively. Applicant incurred the \$640 debt for a dental procedure he had in 2018 or 2019 he believed was covered by health insurance. He believed the \$186 debt related to his child's medical care. He could not recall what the \$117 medical debt pertained to. He contacted the creditor in March 2023 to resolve the debts but he could not afford a lump-sum payment. He intends to contact the creditor to pay these debts. (Tr. 49-52, 55, 105; GE 1, 3-6, 9; AE I)

SOR ¶ 1.h is a \$151 charged-off account. Applicant obtained this credit-building loan of \$500 in October 2021. He made monthly payments on the loan for approximately six months. Documentation reflects that he paid this loan in November 2023. (Tr. 52-55; GE 4; AE E, I)

SOR ¶ 1.j is an auto loan past due in the approximate amount of \$1,283 on a \$25,152 balance. Applicant obtained this loan in 2020 to purchase a used car. His monthly payments were \$658 for 72 months. At times, he was late in making his monthly car payment. As of the date of the hearing, he was current. Documentation reflects that he made payments toward this debt of \$658, \$1,318, \$2,635, \$500, and \$817 on May 2023, July 2023, October 2023, and twice in November 2023, respectively. (Tr. 55-62, 100; GE 4-5; AE B, I)

SOR ¶ 1.k is a credit card past due in the approximate amount of \$26 on a \$263 balance. Applicant obtained this card in 2021 to build his credit. He made payments on the card for five to six months and then stopped because of a period of unemployment. When he contacted the creditor in early 2023, he was unaware he had an outstanding balance. He paid the balance and closed the account. Documentation reflects that he had a zero balance on this account as of April 2023. (Tr. 62-65; GE 4; AE F, I)

SOR ¶ 1.l is a credit card past due in the approximate amount of \$40 on a total balance of \$159. Applicant also obtained this card in 2021 to build his credit. Documentation reflects that he made a \$179 payment in April 2023 and had a zero balance. (Tr. 65-67; GE 4-5; AE C, I)

SOR ¶ 1.m is an account in collection for \$2,208. Applicant rented an apartment at this complex from around 2014 to 2016. He was unable to pay his rent in full for two months, due to unemployment and minimal income. He also caused minimal damage to one of the bedroom's door frames as he was attempting to fit his son's crib into the bedroom. When management could not resolve a roach infestation in the apartment, he broke his lease and incurred a penalty for doing so. He has not been able to locate the creditor to resolve this debt. (Tr. 67-69, 105; GE 1, 3, 5-6, 8-9)

SOR ¶ 1.n is a \$502 charged-off department store credit card. Applicant obtained this card in 2015. He closed the card but has not paid the outstanding balance. (Tr. 69-70; GE 3, 5-9) .

Applicant owes approximately \$50,000 in federal student loans. His student loans were in forbearance due to the COVID-19 payment pause and he was scheduled to begin paying them in November 2023, at \$500 monthly. He did not make the November 2023 payment, due to other financial obligations. He intended to make his November 2023 and December 2023 payment together and he intends to pay his student loans. Documentation reflects that he made one payment of \$577 toward his federal student loans in January 2024. His most recent budget reflects a monthly income of \$8,681. After paying his monthly expenses, to include \$1,985 in rent and allotments of \$150 and \$372 for his federal and state taxes, respectively, but not his monthly student loan payment, his projected monthly net remainder was approximately \$2,000. He sought to prioritize his outstanding federal and state taxes. Once he commenced employment with E2, he anticipated a supplemental annual salary of \$145,000, or \$9,440 monthly, a combined monthly income of \$18,122, and a combined monthly net remainder of \$5,205. He intends to utilize his extra income to resolve his delinquent debts. He does not have any other

delinquent debts. He has not received credit counseling. (Tr. 70, 86-90, 94-96, 98, 103-106; GE 3; AE H, J)

Applicant provided letters of support from his spouse, friend and neighbor of four years, fellow cub scout volunteer, and former colleague. All vouched for his judgment, reliability, and trustworthiness. (AE J)

## **Policies**

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(a), 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.

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

## Analysis

### 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 not being able to pay his debts. AG ¶¶ 19(a) and 19(c) are established.

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

Conditions beyond Applicant's control contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. He paid the debts in SOR ¶¶ 1.d, 1.h, 1.k, and 1.l, and he is current and paying the debt in SOR ¶ 1.j. AG ¶¶ 20(a), 20(b), and 20(d) apply to those debts and I find them in Applicant's favor.

Applicant has either not made efforts to resolve or did not provide documentation to corroborate any of his claims of payment or resolution for the remaining SOR debts. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply to SOR ¶¶ 1.a-1.c, 1.e-1.g, 1.i, and 1.m-1.n.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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 investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior. . . .

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant damaged his company laptop and hard drive while working from home in 2020. Instead of notifying and returning the equipment to his employer, he took actions to wipe the hard drive clean and disposed of the equipment without his employer's knowledge or permission. He did not report his actions until his employer conducted an audit of company assets. His actions led to his termination. AG ¶¶ 16(d)(1) and 16(d)(4) are established.



AG ¶ 17 describes the following relevant conditions that could mitigate the personal conduct security concerns:

(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; and

(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.

Applicant acknowledged that his actions constituted a serious lapse of judgment. He admitted that he was hesitant to have the value of the laptop deducted from his income. When he finally disclosed his actions to his manager, he was fired. This was an isolated incident, he understands the importance of following rules and regulations, and he learned his lesson. AG ¶¶ 17(c) and 17(d) apply.

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant mitigated the personal conduct security concern but he has not mitigated the 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraph 1.j-1.l:	For Applicant
Subparagraph 1.m-1.n:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## Conclusion

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

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Candace Le'i Garcia  
Administrative Judge