



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



In the matter of: )  
)  
) ISCR Case No. 22-01859  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

05/29/2024

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**Decision**

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HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application on July 12, 2021. On December 9, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F and Guideline E. The DoD acted 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered (Answer) the SOR on March 8, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 30, 2023, and the case was assigned to me on November 6, 2023. On November 21, 2023,

the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 19, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. With his Answer, Applicant submitted Applicant Exhibits (AE) A through L, which were admitted into evidence without objection. AE L was described on the record but not formally listed when I admitted Applicant's evidence. Applicant testified but did not present the testimony of any other witnesses. I kept the record open after the hearing until January 9, 2024, to enable Applicant to submit documentary evidence. He timely submitted AE M (response to security department), AE N (employment letter June 27, 2019), AE O (rescind employment letter July 12, 2019), AE P (truck loan statement dated November 29, 2023), AE Q (email June 20, 2019), AE R (termination letter July 8, 2019), AE S (government credit card, March 3, 2017), and AE T (credit report, January 9, 2024), which were admitted without objection. AE Q and AE R are duplicate submissions to AE H and AE K. DOHA received the transcript (Tr.) on January 4, 2024.

### **Findings of Fact**

Applicant admits the nine debts alleged in SOR ¶¶ 1.a through 1.i, which are cross alleged under SOR ¶ 2.a. The debts involve collections, charge-offs, and a tax lien. His admissions are incorporated into the findings of fact. He denied SOR ¶ 2.d, citing to the details provided in his exhibits. He admitted he failed to disclose the details listed in SOR ¶¶ 2.b and 2.c.

Applicant is a 34-year-old system cloud administrator. He has worked for his sponsor since September 2021. He currently earns \$100,000 annually. He was granted his first clearance in 2010. He graduated high school and served honorably in the Navy Reserve from 2010 through 2018. He is twice divorced, most recently in 2018. In the recent divorce he took responsibility for the majority of the debts because he was the one that was working the most. His former spouse received the house and they each claimed their respective vehicles. He resides with his father. (GE 1; Tr. at 22-24, 28.) He stated by "trying to make the divorce easy and seamless, I took on a majority of the debts because they were debts that I accrued by making upgrades. And I chose to spend that money, so I took on those debts." (Tr. at 28.)

He lost his job in July 2019 after a dispute over his timecard. He was unemployed for two months before taking an IT position from September 2019 to July 2020 when he was laid off due to the COVID pandemic. He worked for a month as a deli clerk and then as a helper for a general contractor four months before returning to the IT field in November 2020. (GE 1 at 13-19.)

### **Guideline F**

**SOR ¶ 1.a car loan placed for collection in the approximate amount of \$11,878.** Applicant provided the creditor's letter, which contained the lien release document required in order to transfer ownership due to lien satisfaction for the vehicle. (AE P.) He had fallen behind due to unemployment and once employed was able to catch

up on his payments. The vehicle was briefly repossessed but he was able to get it back by bringing his payments current because his family loaned him some money. He testified he had received AE P about four days prior to the hearing. (Tr. at 51-53; AE M; AE P; AE T at 10.)

**SOR ¶ 1.b: residential account placed for collection for \$5,779.** Applicant left this apartment in July 2020 after being laid off due to COVID. (Tr, 41-42.) He gave notice of his intention to vacate the apartment in June 2020, however the property manager continued to invoice him \$1,400 a month for the next 4 months, which was the end of his lease. The property manager did not have a record of the email notice he sent to Applicant. The property manager turned the debt over to collection company. He acknowledges it is his debt and needs “to pay the debt and clear the debt.” (Tr. 58.) He had tried reaching out about six months ago and creditor suggested a repayment plan of 6 payments at \$950, which was not feasible. He was also told they wanted just under \$2,000 to set up a payment plan. He intends to contact the collection company again to request a more reasonable option. (Tr. 53-59; GE 1; Answer; AE T at 7.)

**SOR ¶ 1.c: utility account placed for collection in the amount of \$1,422.** Applicant had this account when he lived at the apartment complex alleged in SOR 1.b. He states in his post-hearing statement he turned in his equipment and told them to terminate his services. He is attempting to work out the details of a payment plan, he estimates it will be about \$200. He acknowledged in his testimony he had mixed up the accounts. He had provided a 2015 statement for an earlier account that showed he had paid that account. (Tr. at 59-60, 82; GE 2; AE L; AE T at 5.)

**SOR ¶ 1.d: utility account placed for collection in the amount of \$158.** Applicant testified that this debt “should be paid. It was one of [the] small debts for the utilities at the apartment that [he] was at.” (Tr. at 61.) He estimated he paid it about six months after he stopped living there. GE 2 showed the debt as unpaid. (Tr. at 62.) He stated he would reach out to the utility to get proof. (Tr. at 62.) No documents were received.

**SOR ¶ 1.e: residential account placed for collection for \$3,491.** When Applicant lost his job in July 2019, he could no longer afford the rent and made the decision to break his lease. His rent at the time was \$1950. He was required to pay 1½ months’ rent for breaking the lease. He testified he tried reaching out to the creditor, but they wanted a large downpayment to start a payment plan. The last contact was about six months prior to the hearing. (Tr. at 53-56.)

**SOR ¶ 1.f: delinquent medical debt for \$255.** The debt became delinquent in November 2018. Applicant testified the debt should have been paid off. He paid it with his debit card and stated he was told a letter would be sent to him. As of the hearing he had had not seen a letter from the creditor. He learned of the debt when he pulled his credit report for his security team. (Tr. at 61-62.)

**SOR ¶ 1.g: credit card referred for collection for \$1,410.** Applicant's military unit, after a two-week training exercise, was delayed in processing his travel claim. When he received the money, he needed the "money for something else" and when it was deposited into his personal account, he used it for something else. (Tr. at 64.) The account became delinquent in 2012. It was 2018 before he was able to resolve this debt. The September 2021 credit report shows the debt as a charge off. (Tr. at 66; GE 4 at 5.) He offered AE A, dated December 5, 2018, and AE T, both of which state this credit card account has been "paid" according to these credit reports. (AE T at 4.)

**SOR ¶ 1.h: account placed for collection for \$1,948.** Applicant used a store credit card to purchase jewelry. With his Answer he provided documentation he had reduced the debt to \$479. (AE E.) He testified he was able to settle the account for \$300 and could provide proof of the payment. (Tr. at 67.) The balance on the account supported his testimony he had been making payments to the point where he could settle it. (Tr. at 68, 88.)

**SOR ¶ 1.i: indebted to his state comptroller for a tax lien entered against him in 2019 for \$2,285.75.** The tax lien is for 2017. Applicant filed his taxes himself and made a clerical error, which resulted in him being the assessed additional taxes. He testified that about a month prior to the hearing he had received documentation from the comptroller indicating the debt was still outstanding. He has not been able to set up payments because he cannot meet the minimum payment of \$800. (Tr. at 69.) He was familiar with the process because the comptroller had filed a tax lien in 2010 after he filled out employment forms incorrectly. He provided a release of tax lien to show he had satisfied the 2010 tax judgment. (Tr. at 71; AE B.)

Applicant testified he had been filing his Federal and state taxes on time for "the last couple of years." In 2017 and 2018, he acknowledged he was "about a year behind on filing [his] taxes." (Tr. at 72.) I will consider this testimony within my whole person analysis. Since his initial mistake in 2010 he has made sure he does not end up owing money, or as little as possible, by having an additional amount taken from his check and claiming single on his W-4. (Tr. at 72.) He resolved a loan from his 401k, which had been used to keep his vehicle running. (AE M.) He is current on the credit card he currently maintains for his personal use. (AE T at 3.) He paid an earlier car loan in September 2018. (AE T at 6.) He offered other credit items showing he had maintained his finances prior to his divorce by paying off his credit card and an automobile loan. (AE T at 8, 9.) His current credit score is Fair. (AE T at 15.)

## **Personal Conduct**

**SOR ¶ 2.a: That information set forth in subparagraph 1.a through 1.i, above.** The Guideline F findings of fact and discussion above are applicable to this SOR allegation.

**SOR ¶ 2.b: You answered "No" to having "been over 120 days delinquent on any debt not previously entered? [and] You are currently over 120 days delinquent**

**on any debt?” and thereby deliberately failed to disclose that information as set forth in subparagraphs 1.a through 1.i, above.** Applicant credibly testified regarding his thought process and in his post hearing response further explains that thought process as it relates to each SOR allegation. Regarding SOR ¶ 1.a, he received the truck back after only one day of repossession and did not consider this as a repossession. He also was never more than 60 days behind on his payments and for those reasons he did not report the debt on the SCA. For SOR ¶ 1.b, he stated the debt was sold and he did not follow up appropriately and forgot about the debt. Concerning SOR ¶ 1.c, because he had received a letter from the telecommunication company saying that they were making amendments to his credit report and he did not fully “absorb” the SCA instructions, or he would have reported this debt as having been in collections with a status of paid off. As to SOR ¶¶ 1.d and 1.f, he was unaware of these medical debts until receiving the SOR. For SOR ¶ 1.e, he did not follow up with the leasing office and forgot about the debt. He explained he had paid the SOR ¶¶ 1.g, 1.h, and 1.i debts in full and did not “absorb” the SCA instructions requiring him to report these debts.

**SOR ¶ 2.c: You answered “No” to having a lien placed against your property for failing to pay taxes or other debts and thereby deliberately failed to disclose that information as set forth in subparagraph 1.i above.** He acknowledges in his testimony and response he should have answered yes. He had provided an earlier resolved lien with his Answer. After receiving the SOR and after conducting a detailed review of Section 26 of the SCA he has a better understanding of what should have been reported in this section.

**SOR ¶ 2.d: In July 2019, [your company] terminated you for falsifying your timecard.** Applicant denies the allegation. He was never counseled on his support to his clients. There was a dispute as whether he needed to be in one place at one time, all the time, even though he did report to multiple different locations. The login information did not always capture whether an employee was online. One his colleagues was the one that was reporting whether he was online and physically at the secured location almost every day and he had filed complaints against them. The various emails he submitted showed a strained relationship between him and his supervisors and difficulties of him working offsite, in a secured facility that his supervisor could not access, and the issues with the network. He acknowledged taking long lunches or leaving early and not making up the time. (Tr. at 33, 86-88; AE C; AE F; AE M.)

## **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 and the documentary evidence admitted into evidence establish the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); and AG ¶ 19(c) ("a history of not meeting financial obligations.")

The following mitigating conditions under AG ¶ 20 are relevant:

(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

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

AG ¶¶ 20(b) and 20(d) are not fully applicable. Applicant's financial difficulties were incurred in part as result of his 2018 divorce, which was a circumstance beyond his control. After his termination, he worked in the IT field but then experienced a layoff and underemployment, which were not directly related to his termination. His 2020 residential debt is related to being laid off due to COVID. He has resolved some of his SOR debts and other debts not alleged in the SOR. His automobile loan debt and credit card debt are resolved, and he has substantially reduced the balance on the store credit card. He has four large debts that remain outstanding, two residential debts, the tax lien, and the utility account, upon which he has not made any payments. He did not support his testimony regarding payments on his two small debts, SOR ¶¶ 1.d and 1.f. He has moved

in with his father to help improve his financial situation. While he has taken some action to overcome his indebtedness, he has not shown he has adhered to a plan. In order to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere “to a good faith effort to repay overdue creditors or otherwise resolve debts.” See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). He did not establish that he has made a good-faith effort to pay or resolve his debts.

### **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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

(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:

SOR ¶¶ 2.b and 2.c allege whether he deliberately failed to disclose the information set forth in SOR ¶¶ 1.a - 1.i and 1.i respectively. Applicant admits he did not disclose the debts and said he mistakenly failed to disclose these debts on his SCA in his testimony and statement. Based on his credible testimony and statement detailing each allegation I am not convinced he deliberately omitted, concealed, or falsified of relevant facts from his SCA.

“Applicant’s statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation



omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's mens rea in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

SOR ¶¶ 2.a and 2.d allege Applicant's handling of his finances and work conduct concerning his timecard, which have raised questions regarding his judgment, trustworthiness, reliability, and willingness to comply with rules and regulations. SOR ¶ 2.a is not improperly pled under Guideline E, because as 16(d), specifically states "credible adverse information that is not explicitly covered under any other guideline." These debts were addressed in Guideline F. The record supports that he was terminated for timecard fraud. AG ¶ 16(d) is applicable to SOR ¶ 2.d.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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

AG ¶ 17(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.

The mitigating conditions are established for both allegations. I am satisfied that although Applicant's termination for timecard fraud is serious, he has acknowledged his role in the event, which included taking long lunches and leaving early. He documented the issues in the workplace with his supervisor that created a difficult work environment and the specific issues surrounding his workplace, which contributed to his termination. He credibly testified he has taken steps to ensure that he does not face a similar situation in the future. His current employment reflects his understanding of his responsibilities.

### **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.

After weighing the disqualifying and mitigating conditions under Guidelines F and E and evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has not mitigated the security concerns based on financial considerations and has mitigated the concerns raised under personal conduct. Accordingly, I conclude he has not carried his burden of showing that it is not clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.g, 1.h:	For Applicant
Subparagraphs 1.b-1.f, 1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.d:	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.

Charles C. Hale  
Administrative Judge