



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03360
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

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06/05/2024

**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by his participation in an employee-theft scheme or his unresolved delinquent accounts. Clearance is denied.

**Statement of the Case**

On April 2, 2022, the DOD issued a statement of reasons (SOR) detailing security concerns under the personal conduct, criminal conduct, and financial considerations guidelines. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for

a determination whether to grant or deny his security clearance. Applicant timely answered the SOR and requested a hearing.

At the hearing, convened on August 1, 2023, I appended to the record as Hearing Exhibit (HE) I, the disclosure letter, dated October 21, 2022. I admitted Government's Exhibits (GE) 1 through 7 and Applicant's Exhibits (AE) A through C, without objection. After the hearing, I left the record open until August 31, 2023, to allow Applicant to submit additional documentation. He did not. DOHA received the transcript (Tr.) on August 11, 2023.

### **Procedural Matters**

Pursuant to Directive, Additional Procedural Guidance ¶ E3.1.17, I amended the SOR *sua sponte* to conform to the evidence, adding an additional allegation under the financial considerations guideline, ¶ 3.o:

The conduct alleged in SOR ¶¶ 1.a and 2.a above.

Neither party objected to the amendment. Applicant denied the allegation, stating that restitution had been paid. (Tr. 69-71)

### **Findings of Fact**

Applicant, 29, has worked for his current employer, a federal contracting company since March 2020. He completed his first security clearance application on April 28, 2020. He disclosed a February 2017 termination from a large electronics retailer, reporting that he left the job by mutual agreement following charges or allegations of misconduct. He reported the allegations as being a "theft scheme." (GE 1) In response to questions about his criminal history he provided more information about the allegations:

I received goods from a coworker which later turned out to be stolen, was fired along with the other workers and was arrested under charges for theft and scheme. (GE 1)

Applicant began attending college and living on campus in August 2012. He financed his education with the student loans alleged in SOR ¶¶ 3.a – 3.f and 3.h – 3.k. The two years he lived on campus, the proceeds from his student loans covered his tuition and living expenses. His financial problems began once he moved off campus. Even though he worked parttime and received some financial assistance from his mother, he did not have enough money to pay living expenses.

In March 2014, he began working for a national electronics retailer. By January 2015 he was no longer enrolled in college. He continued to struggle to pay his living expenses and in May 2016, he was evicted from his apartment. The apartment complex obtained a judgment for the outstanding rent due. Applicant's financial problems

persisted after the eviction. He told a coworker about his financial problems and the coworker offered to help. (Tr. 18, 21-24, 46; GE 1-2)

The coworker gave Applicant a limited-edition gaming console, telling Applicant that he was upgrading to a better system. At the time, Applicant considered the console to be an unexpected gift. He sold it, earning enough money to avoid eviction again. When Applicant told the coworker that he sold the console, the coworker told Applicant that he expected the console to be sold. The coworker also told Applicant that he could help him earn extra money. Still experiencing financial problems, Applicant joined the coworker in a theft scheme. (Tr. 46-49)

Applicant explained the scheme in his May 2020 interview with a background investigator:

[Coworkers] were falsifying turn[-]in in records. They would go to an empty workstation (computer/register) and put in that a certain item was returned to the store which it never had been and the system would create a gift card for the false return. The employees would then take these gift cards, purchase items in the store and then resell them in the private market for cash...[Applicant] started to take some of the items bought by the false gift cards and resell them for cash. This took place from 12/2016 to 02/2017 (total of 6 weeks) once or twice a week. [Applicant] never took part in falsifying the computer systems with fake returns. During this period [Applicant] received various gaming systems and computer parts which in total were worth an estimated \$4,000 to \$5,000...[Applicant] was aware that his actions were illegal at the time. (GE 2)

At the hearing, Applicant provided a different account of his involvement in the scheme:

I started to see other employee[s]' conduct, conduct[ing] trade-ins with items that did not exist...So, I had started to indulge in that as well along side of them and was able to forge trade-ins in the system in order to use that money to pay my rent and pay for, you know living essentials.... (Tr 20)

So, I would go into the system...Go into the system and initiate a trade-in for a high ticket item such as a TV or DSLR camera that held a high trade in value and then those gift cards would be issued and then there would be a gift card that you used to make purchases on. So, those items never existed. They were fake transactions. (Tr. 51)

He also admitted selling the gift cards generated by these fraudulent returns. (Tr. 20, 44, 53)

Applicant also explained that the coworker would keep the electronics purchased with the stolen gift cards in his apartment. Initially, Applicant would help the coworker

transport illegally purchased items to the coworker's home. At some point, Applicant began keeping stolen items at his home. (Tr. 49)

In February 2017, Applicant was confronted by his supervisor and a corporate representative about his participation in the theft scheme. After admitting his participation in the scheme, he was terminated and arrested for felony theft. In October 2017, he pleaded guilty to felony theft-scheme (\$10,000 to under \$100,000). He was sentenced to 60 days in jail and ordered to pay \$5,943 in restitution, which included interest and fees. At the hearing, Applicant testified that during the criminal plea hearing he told the judge that he only sold the stolen gift cards. (Tr. 20-21, 53; GE 3-5; AE A)

Applicant claims to have paid over \$17,000 in total restitution, with almost \$12,000 being paid before he entered his guilty plea. He did not provide any corroborating evidence. In the three years after his conviction, Applicant prioritized paying off his court-ordered restitution and judgment for the apartment lease. He paid \$300 each month toward the court ordered restitution and satisfied the order in August 2020. He paid \$450 each month toward the judgment, satisfying it in March 2021. However, between 2017 and 2020, he accumulated other delinquent accounts. His 10 student loan accounts became delinquent in 2018. He testified that his wages were garnished for an unspecified period to collect on the loans. (Tr. 21-22, 25, 32-33; GE 2, 6-7, AE A-B)

At the time DOD issued the SOR in April 2022, Applicant's student loans were in administrative forbearance under the COVID-19 payment pause implemented as part of the March 2020 Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Under the payment pause, previously delinquent loans were considered in good standing and did not require payment. In December 2022, the Department of Education launched the Fresh Start Program, a loan rehabilitation program for loans that were delinquent or in default prior to March 2020. Applicant enrolled in the program on July 28, 2023, four days before the hearing. The loans were assigned to a servicer, but the terms of the rehabilitation had not been established. (Tr. 24, 29, 34-36; AE C)

In addition to the 10 student loans, Applicant had four other consumer accounts, SOR ¶¶ 1.g and 1.l – 1.n, totaling \$5,472, that became delinquent between 2018 and 2020. When he completed paying the restitution and judgment, he did not redirect the \$750 toward these debts because he had other financial priorities, like saving for a house and purchasing a car. He claims to have retained a debt consolidation/credit repair service he found on social media to help him repair his finances. He paid the service, which he used from August to December 2022, \$495 to help him resolve his delinquent accounts. The service informed him that they could not help him because the debts were no longer collectible. He did not provide any documentation from the service. (Tr. 33, 38-40, 61-63; GE 6-7)

According to GE 6, a May 2020 credit report with information from the three major credit bureaus, the debt alleged in SOR ¶ 1.g was charged off in December 2016. The debts alleged in SOR ¶¶ 1.l – 1.n were reported as being in collection. An April 2022 credit report (GE 7), with information reported by only 1 of the 3 credit bureaus

showed that the debt alleged in SOR ¶ 1.g was also reported as charged off. The debt alleged in SOR ¶ 1.l was also reported as being in collection. The debts alleged in SOR ¶¶ 1.m and 1.n were not reported. Applicant claims to have paid SOR ¶¶ 1.m and 1.n but did not offer any proof of payment. (Tr. 41-42; GE 6-7)

Applicant describes his finances as comfortable and he tries to live below his means. He earns \$75,000 annually. At the time of the hearing, he was living with his mother. He contributes \$1,100 each month to the household for rent and living expenses. He planned on moving in with his girlfriend. He anticipated a minimal increase in living expenses. He has four credit cards, three of which have balances. The minimum payment is \$80 for the three cards. He believed that he would be able to maintain his current savings rate of \$650 per month and had over \$7,000 in savings. He reported having over \$2,100 in discretionary income left over after paying his financial obligations each month. (Tr. 24-30)

He considers his past actions a failure of character. He stated that an individual is only able to show their true character when things are not going well. He stated that he would not engage in similar conduct in the future. Applicant filed a motion to have his felony conviction reduced to a misdemeanor. The disposition of the motion is unknown. (Tr. 45-47, 56-57; GE 1)

### **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." 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 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 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**

Government established a *prima facie* case under the criminal conduct, financial considerations, and personal conduct guidelines. Applicant failed to present sufficient evidence to mitigate the alleged concerns.

#### **Criminal Conduct**

Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability and willingness to comply with laws, rules, and regulations. Applicant’s 2017 felony conviction for theft warrants the application of the following disqualifying condition:

AG ¶ 31(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

None of the mitigating conditions apply. Applicant exploited the weaknesses in his employer’s inventory system for his financial gain. His inconsistent statements about the extent of his involvement in the scheme show that he has not fully taken responsibility for his criminal behavior. Given the severity of the underlying offense, his conduct is not mitigated by the passage of time, his payment of restitution, or his positive employment history since his felony conviction. The motive behind actions continue to reflect negatively on his current security worthiness.

#### **Guideline F, Financial Considerations**

Failure to meet one’s 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 a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18) The record establishes the Government's *prima facie* case under this guideline. The following financial considerations disqualifying conditions apply:

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

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

None of the mitigating conditions apply. Financial difficulties have proven to be a significant motivating factors for espionage or attempted espionage. Applicant, in a time of financial difficulty, engaged in illegal activity to generate funds. Similar to the reasons explained in the criminal conduct section above, his actions are not mitigated under the financial considerations concerns. Furthermore, completing the terms of his sentence does not eliminate the security significance of the underlying conduct or prevent the examination of the conduct and the resulting security concerns related to his current finances.

Applicant engaged in criminal conduct with the goal of resolving his financial problems; however, his actions had the opposite effect. His payment of court-ordered restitution exacerbated his financial problems and resulted in the accumulation of additional delinquent debt. The accumulation of these debts, 10 student loans and 4 consumer accounts, were not caused by events beyond his control, but rather the his inability to pay the debts while he paid the restitution. As of March 2021, he had satisfied the restitution order, but did not provide sufficient evidence of his efforts to resolve the delinquent accounts alleged in the SOR.

Despite having the benefits provided by the CARES Act, administrative forbearance for his delinquent student loans and the Fresh Start Program to rehabilitate them, he did not take any action on his student loans until four days before the hearing. He did not provide any evidence corroborating his efforts to receive financial counseling, nor did he provide evidence of payment on the accounts ¶¶ 3.m and 3.n as he claimed. He did not provide a sufficient reason to explain his failure to pay the four consumer accounts even though he maintained over \$2,000 in disposable income to do so.

## **Personal Conduct**

Applicant's participation in the employer theft scheme is disqualifying under the criminal conduct and financial considerations concerns. However, Applicant's involvement in the theft scheme also warrants consideration under the personal conduct guideline. While none of the specific disqualifying conditions apply, the conduct falls within the overall concern:

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.

Applicant has failed to provide consistent and candid disclosures about his past criminal conduct. Based his testimony at hearing, it appears that he was not truthful in his statements to the judge who accepted his guilty plea. Throughout this adjudication process, he has either minimized his behavior or provided conflicting statements about his level of involvement in the scheme. The record supports a negative credibility assessment, that Applicant has failed to mitigate. His actions cannot be considered minor. In a place of financial distress, he chose to act in his self-interest and exploited his employer's vulnerabilities. The circumstances of his conduct continue to cast doubt on his reliability, trustworthiness, and judgment.

Based on the record, I have significant reservations about Applicant's security worthiness. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). The purpose of the security clearance adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." (AG ¶ 2(d)) Applicant committed a series of thefts against a former employer to generate funds that only stopped when he was caught. He has failed to fully take responsibility for his conduct. He has not demonstrated the trustworthiness and reliability required of those given access to classified information.

### **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, Personal Conduct:	AGAINST APPLICANT
Subparagraph 1.a	Against Applicant
Paragraph 2, Criminal Conduct:	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant
Paragraph 3, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 3.a – 3.o	Against Applicant



## **Conclusion**

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

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Nichole L. Noel  
Administrative Judge