



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



In the matter of:)	
)	
)	ISCR Case No. 23-01356
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

07/02/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines F (financial considerations) and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On August 1, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and J. Applicant responded to the SOR on August 9, 2023, and requested a hearing before an administrative judge. The case was assigned to me on November 28, 2023. The hearing convened as scheduled on February 14, 2024.

Evidentiary and Procedural Rulings

Evidence

Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. The

record was held open so that he could submit documentary evidence. No documents were submitted.

SOR Amendment

Department Counsel's motion to amend the SOR by adding an allegation under Guideline F was granted without objection. (Transcript (Tr.) at 62-64) The new allegation at SOR ¶ 1.f reads as follows:

f. You were evicted from your apartment in December 2023 for failure to pay rent.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor. He has worked directly for the company or as a contract employee since 2022. He is applying for a security clearance for the first time. He attended college for a period without earning a degree. He is married with three children and two stepchildren. He and his wife are separated. (Tr. at 18-20, 22, 60; GE 1, 2)

Finances

The mother of Applicant's oldest child obtained an order of child support from her state (State 1) when the child was about five years old. Applicant has not lived in State 1 for years. He testified his child is 21 years old, but the birthdate provided on his Questionnaire for National Security Positions (SF 86) in October 2022 would make his oldest child 19 years old. (Tr. at 26-27; GE 1, 3)

State 1 garnished Applicant's wages for a period. He told a background investigator in December 2022 that he was originally garnished about \$2,200 a month. He told the investigator that the order was dismissed, but State 1 continued to periodically take \$700 to \$800 from his pay until about 2015 when they stopped garnishing his wages. He testified that the garnishment was about \$627 every two weeks. He did not voluntarily pay child support. Credit reports list his child support arrearages at more than \$68,000. (Tr. at 27-28; GE 3, 7-10)

Applicant testified one of the reasons that he did not pay child support was because he was angry that the mother kept the child from him. He stated that he does not currently pay support for his oldest child because the child is an adult, but he provides money directly to his child. He stated that the child's mother has agreed to ask State 1 to remove the arrearages. (Tr. at 21, 25-26, 29; GE 3)

In addition to the child support arrearages, the SOR alleges four delinquent debts totaling about \$4,000, and that Applicant was evicted from his apartment in December 2023 for failure to pay rent. Applicant admitted owing all the delinquent debts and added that he was "working on getting this removed." (Applicant's response to SOR)

Applicant stated, without corroborating documents, that he paid the \$407 telecommunications debt alleged in SOR ¶ 1.d. That debt is listed by all three credit reporting agencies on the October 2022 combined credit report, with an activity date of October 2022. It is listed as held by a different collection company on the April 2023 Experian credit report. The debt is not listed on the September 2023 and February 2024 Equifax credit reports. (Tr. at 33-34; Applicant's response to SOR; GE 7-10)

Applicant did not make any payments toward his other delinquent debts. He stated that his current job is the first time he had a stable, well-paying job. He stated that he retained a credit repair company to address his delinquent debts, for which he paid the company \$76 per month. He stopped paying the company about two months before the hearing. He was evicted from his apartment in about December 2023 for failure to pay rent. He testified that he was about two months behind on his rent, which he attributed to his marital separation. (Tr. at 16, 20, 30-34, 40-44, 63; GE 3, 7-10)

Criminal Conduct

Applicant has been involved in several criminal incidents, resulting in arrests and charges. In 1996, when he was 13 years old, he was quickly caught after stealing a \$500 bicycle. He was charged with theft of property greater than \$50, but less than \$500. It appears that he received a deferred adjudication with probation for two years. (Applicant's response to SOR; GE 3-6)

In 1998, when Applicant was 14 years old, he took his uncle's girlfriend's car for a ride without her permission. The girlfriend's nephews were also in the car. He had an accident in the car. He was charged with theft of property greater than \$1,500, but less than \$20,000; unauthorized use of a vehicle; and burglary of a vehicle. He pleaded no contest to burglary of a vehicle and was given probation. (Applicant's response to SOR; GE 3-5)

Applicant was arrested in 2011 and charged with possession of marijuana, less than two ounces. He pleaded guilty and received a deferred adjudication. He stated that he was driving with a passenger when the police stopped him and discovered marijuana in the car. He stated that the marijuana did not belong to him. He believes he may have paid a fine. (Tr. at 47-52; Applicant's response to SOR; GE 3-5)

Applicant was arrested in 2012 and charged with assault causing bodily injury. He pleaded guilty to a lesser charge. The police report of the incident indicates that Applicant argued with the manager of a convenience store after he walked into the store with a marijuana cigarette ("blunt") in his mouth, and the manager told him he could not come into the store with the blunt. Applicant bought his items, left the store, and then came back. He ignored the manager's repeated directions to leave and pushed the manager hard, knocking him back about ten feet. Applicant walked towards the manager, who had pulled a gun. The manager hit Applicant in the head with his hand that held the gun, and the gun discharged. The bullet did not hit Applicant or anybody else. (Tr. at 15, 54-57; Applicant's response to SOR; GE 3-6)

Applicant testified that he was the one who was assaulted when the manager “stepped in [his] personal space.” He stated that he pushed the manager back, and then the manager pulled out a gun and hit him with it. However, the description of the event in the above paragraph was verified by the police officer who viewed the tape from the store’s security camera. Applicant testified the tape was start and stop and did not show the complete action. He stated that he was not the person who walked into the store with a blunt, and that another individual had the blunt. He told the police officer on the scene, and he also testified that the discharged bullet hit his car. The police officer expressed doubts that this was possible, writing in the police report: “It did not appear that the round fired by the [manager] could have hit the vehicle from watching the video, the trajectory did not look right from where the gun was fired to where the vehicle was parked.” (Tr. at 15, 54-56; Applicant’s response to SOR; GE 3-6)

Applicant was arrested in July 2019 for possession of marijuana, less than two ounces. The case was dismissed without prosecution. Applicant testified that there were multiple people in a car that he was driving when he was stopped by the police for a minor traffic offense, and marijuana was found in the car. He stated that the marijuana did not belong to him, but everyone in the car was charged. (Tr. at 45-47; Applicant’s response to SOR; GE 3-5)

Applicant admitted that he smoked marijuana when he was young, but he asserted that he had not used marijuana since 2007, when he was shot in the head in what he described as a hostage situation. He stated that he made a big change in his life, and he does not put himself in situations that can get him in trouble. (Tr. at 52-54, 60; GE 3)

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.

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 J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(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.

Applicant was arrested and charged with criminal offenses on five occasions. AG ¶ 31(b) is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Marijuana was involved in three of Applicant's five arrests. He admitted that he smoked marijuana when he was young, but he had not used marijuana since 2007, when he was shot in the head in what he described as a hostage situation. His testimony is not credible in light of the evidence.

In the 2012 arrest, security camera tape corroborated the store manager's statement that Applicant walked into the store with a marijuana cigarette in his mouth and later assaulted the manager. Applicant did not dispute that the individual who came into the store had a blunt, but he asserted that it was another individual who had the blunt. It is unlikely that a police officer would misrepresent what is on a security tape, when the tape would be readily available to the defendant in the case. I find the police report of the 2012 arrest to be far more reliable than Applicant's version of the event. I further find that his testimony about the incident was intentionally false.

The offenses in 1996 and 1998 when Applicant was a juvenile (SOR ¶¶ 2.d and 2.e) have no current independent security significance and are mitigated. While I did not find Applicant credible, there is insufficient evidence for a determination that he possessed marijuana in 2019 (SOR ¶ 2.a). That conduct is also mitigated.

The remaining conduct occurred about 12 years ago, but Applicant failed to accept responsibility for the conduct and provided false testimony about it at his hearing. The Appeal Board has held that "[a]n applicant's refusal to acknowledge his misconduct or accept responsibility for it seriously undercuts a finding that the applicant has mitigated his misconduct." See, e.g., ISCR Case No. 22-00761 at 6 (Jun. 13, 2024).

Since I cannot trust Applicant's testimony, I also cannot find that criminal conduct is unlikely to recur. His criminal conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant's criminal conduct is not mitigated.

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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems, including child support arrearages, delinquent debts, and eviction from his apartment in December 2023 for failure to pay rent. He stated one of the reasons that he did not pay child support was because he was angry that the child's mother kept the child from him. AG ¶¶ 19(a), 19(b), 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 testified that his current job is the first time he has had a stable, well-paying job. He and his wife recently separated. His employment issues and separation are beyond his control. For AG ¶ 20(b) to be applicable, he must also prove that he acted responsibly under the circumstances.

Applicant stated, without corroborating documents, that he paid the \$407 telecommunications debt alleged in SOR ¶ 1.d. The debt is not listed on the September 2023 and February 2024 Equifax credit reports. I am giving Applicant the benefit of the doubt and find that debt mitigated. He did not make any payments toward his other delinquent debts. He owes a significant amount in child support arrearages and was recently evicted for failing to pay rent.

Applicant does not have a track record that would indicate that his financial problems will be resolved within a reasonable period. He did not act responsibly under the circumstances, and he did not make a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and judgment. None of the mitigating conditions are applicable.

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 F and J in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines F and J.

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.f:	Against Applicant
Paragraph 2, Guideline J:	Against Applicant
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.c:	Against Applicant
Subparagraphs 2.d-2.e:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge