



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



In the matter of:)	
)	
)	ISCR Case No. 23-00669
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

09/25/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations, criminal conduct, and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 23, 2022. On May 2, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations), Guideline J (criminal conduct), and Guideline E (personal conduct). Applicant answered the SOR on May 9, 2023, and requested a hearing before an administrative judge. The case was assigned to me on June 10, 2024.

The hearing convened on August 14, 2024. Department Counsel submitted Government Exhibits (GE) 1-6, which were admitted in evidence without objection. Applicant did not provide any documentation at the hearing. I held the record open for two weeks after the hearing to provide Applicant with the opportunity to submit documentary

evidence. He submitted Applicant Exhibits (AE) A-E, which were admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 35 years old. He has one minor child. He graduated high school in 2007. Since 2021, he has worked as an armed security guard for a government contractor. (Tr. 12-14; GE 1)

Under Guideline F, the SOR alleges 13 delinquent debts (SOR ¶¶ 1.a-1.m) totaling about \$13,079. Applicant has not made any payment arrangements for any of the SOR alleged debts. He stated that after he saves enough money to move, he will contact his creditors to make arrangements. (Tr. 14-43; GE 3, 4, 6)

Applicants earns about \$3,360 monthly and has at least \$2,200 in monthly expenses. He stated that he keeps a budget but is horrible with his finances. He claimed that he does not know how to get financial advice. (Tr. 14-43; AE A)

Under Guideline J, the SOR alleges that Applicant was arrested in 2015 for felony domestic violence with assault or battery, domestic violence touch or strike, domestic violence – intent to do violence and obstruct justice.

Police were originally called to his ex-girlfriend's apartment when Applicant became physically abusive during an argument. He kicked her TV and broke it. When police arrived, he tried to flee, but was stopped and released with a trespass warning. (GE 5)

Applicant had become aggressive over several days after a male friend called her. He had punched a hole in the bedroom wall. He pushed her and took her car keys away and refused to allow her to leave the apartment, and she had to fight him to get away. He jumped in front of her moving vehicle to stop her from leaving, tried to get in the car, and broke the door handle. Another time, while on the phone with her mother, he slammed her phone on the floor, broke it, and would not let her leave the apartment. (GE 5)

About three hours after police issued the trespass warning, Applicant returned to the apartment and broke in. He accused her of having another man with her. When she would not open the door, he tried to climb in through the bathroom window, punched through the windowpane, and she was cut by glass. Fearing for her life, she fled the apartment to a local convenience store and called police. When she returned home, she was afraid and unable to sleep that night. The next morning, he returned to the apartment and demanded she let him in so they could talk. He became enraged, refused to leave, and took her car keys and phone. His mother came to the apartment to get him to leave.

While she was there, he became enraged, threw things, kicked the tv, and damaged a wall. He made threats to his ex-girlfriend to knock her teeth out and kill her. She believed his threats and feared for her life. After police were called, he fled and was later arrested. (GE 5)

Applicant was charged with two felonies and two misdemeanors His case was *nolle prosequi* because he entered a pre-trial diversion program. He had to attend a 12-week anger management class, 20 hours of community service, pay fees and a fine, and was told to have no further contact with his ex-girlfriend. Applicant admitted that he broke the last condition, because he had contact with her a few months later. (Tr. 43-49; GE 5)

At the hearing, Applicant claimed that he was not physical with his ex-girlfriend. He stated that he acted out of character, was immature, and let his emotions get the best of him. (Tr. 14-43)

In his July 2022 background interview with a government investigator, when asked about this incident, he became animated with the investigator, raised his voice, and stated he wanted to terminate the interview. He testified he reacted that way because he felt he was being badgered and judged. He asserted he is older and wiser now than at his interview in 2022. At the hearing, when questioned by Department Counsel on the circumstances of the incident, he was obstinate, and his attitude and tone changed significantly. (Tr. 14-43; GE 2)

Under Guideline E, the SOR alleges that Applicant falsified his February 2022 SCA by failing to report delinquent accounts in Section 26 (SOR ¶ 3.a) and his 2015 arrest in Section 22 (SOR ¶ 3.b). Applicant stated that he did not disclose the debts on his SCA because he did not think the information mattered, and he was stupid and foolish for not doing so. He stated that he did not disclose his 2015 arrest because he was told by the judge that the charges were dropped to a misdemeanor, and he thought no one would see it. He told the background investigator he did not list the information so he could get hired in his current security position. (Tr. 14-43; GE 2)

Applicant provided four professional character letters, which state he is a good employee, reliable, trustworthy, and has good character (AE B C, D, E)

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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes 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.

The financial considerations security concerns are established by the credit reports and Applicant's admissions. AG ¶¶ 19(a) and 19(c) apply.

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;
- (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.

None of the mitigating conditions apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts are being paid, are resolved, or became delinquent under circumstances that are unlikely to recur. His failure to pay these

debts is both long-term and recent, as well as ongoing and unresolved. His behavior continues to cast doubt on his current reliability, trustworthiness, and judgment.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for 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 or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns under AG ¶ 31. The following are potentially applicable in this case:

(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.

The criminal conduct security concerns are established by the police and court records and Applicant's admissions. AG ¶ 31 (b) applies.

I have considered the mitigating conditions 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; 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.

AG ¶¶ 32(a) and 32(d) do not apply. The Government provided sufficient evidence to find that Applicant was violent with his ex-girlfriend and committed domestic violence in multiple incidents. His versions of events are not credible. He broke the no contact order a few months after it was issued. His attitude and tone in his background interview and at the hearing show that he has a problem with anger and controlling himself, which creates doubt about his judgment, reliability, and trustworthiness. Despite the fact he entered a pretrial diversion program, this incident is an ongoing security concern. He also did not provide sufficient evidence to find that there has been successful rehabilitation, or mitigation by the passage of time or other factors.

Guideline E, Personal Conduct

AG ¶ 15 details the personal conduct security 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes...

I have considered the disqualifying conditions under AG ¶ 16 and the following 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to report his financial delinquencies and arrest in the appropriate sections of his SCA. AG ¶ 16(a) applies.

I have considered the mitigating conditions under AG ¶ 17. The following is potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; 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.

None of the mitigation conditions apply. Applicant knowingly falsified his SCA in two sections. He concealed relevant information so that he could obtain his security position. He did not provide sufficient evidence to find that the behavior is unlikely to recur, and it continues to cast doubt on his reliability, trustworthiness, and judgement.

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 considered his character letters. I have incorporated my comments under Guidelines F, J, and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. He did not provide sufficient evidence to mitigate the financial considerations, criminal conduct, or personal conduct 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.m:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	Against Applicant

Conclusion

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

Ross D. Hyams
Administrative Judge