



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



In the matter of:)	
)	
)	ISCR Case No. 23-00853
)	
Applicant for Security Clearance)	

Appearances

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

09/24/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the financial considerations and personal conduct security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on May 27, 2022. On January 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations), and Guideline E (personal conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant provided an undated response to the SOR. (Answer) He also attached documentation to his Answer. The case was assigned to me on May 8, 2024. On June 17, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 17, 2024.

I convened the hearing as scheduled via video teleconference on Microsoft Teams. Department Counsel offered Government Exhibits (GE) 1 through 10; Applicant offered Applicant Exhibits (AE) A through E that he provided with his Answer; and I admitted all exhibits into evidence without objection. DOHA received the transcript (Tr.) on July 24, 2024.

Evidentiary Matter

SOR Amendment

During the hearing, I discovered typos that were alleged in SOR ¶¶ 2.a and 2.b. I determined that the two SOR allegations should accurately reflect, at the end of each allegation, the following information: "...as set forth in subparagraphs 2.c, 2.d, 2.e, and 2.f, ..." rather than the numeral 1, as originally alleged. There were no objections and the SOR was amended to correctly reflect the cross-referenced SOR subparagraphs. (Tr. 71-72)

Findings of Fact

Applicant's Answer to the SOR was vague in that he did not specifically admit or deny all of the SOR allegations under Guidelines F and E. During the hearing, he admitted all of the allegations under Guideline F (SOR ¶¶ 1.a through 1.i). Under Guideline E, he denied the two falsification allegations (SOR ¶¶ 2.a and 2.b), and he admitted the remaining allegations, SOR ¶¶ 2.c through 2.g. (Answer; Tr. 7-10) Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is 55 years old. In November 2020 he was married to his third and current wife. He has two daughters and a stepson, all adults. He earned a bachelor's degree with two minors in 1992. He has worked for his current employer as a protective security officer since June 2014. He also works part-time as an umpire for division one college softball. Last year his combined salary was approximately \$117,000. His wife is employed, and for tax year 2023 she earned \$91,000. Their combined total annual income is about \$208,000. Applicant currently possesses a secret DOD security clearance; however his employer is sponsoring him to obtain a top secret security clearance. (GE 1; GE 2; Tr. 22-24, 54-55)

Financial Considerations:

The SOR alleged Applicant filed for Chapter 7 bankruptcy protection in November 1999, which was discharged in February 2000. (SOR ¶ 1.f) He filed a Chapter 13 bankruptcy in September 2004. The bankruptcy was dismissed in January 2007. (SOR ¶ 1.e) In May 2008, Applicant filed a Chapter 7 bankruptcy, and his debts were discharged in August 2008. (SOR ¶ 1.d) In May 2015, he and his former spouse filed a joint Chapter 13 bankruptcy. This bankruptcy was dismissed in March 2016. (SOR ¶ 1.c) In April 2016, Applicant and his former spouse filed a joint Chapter 13 bankruptcy. Due to their divorce, Applicant refiled a Chapter 13 bankruptcy in July 2017 in his name only, following advice

he received from his attorney. The Chapter 13 bankruptcy was discharged in July 2022. (SOR ¶¶ 1.a and 1.b) Applicant admitted all of the bankruptcies. (Tr. 7-10, 25-29; GE 5)

Applicant attributed all of the bankruptcies alleged in SOR ¶¶ 1.a through 1.f, due to excessive medical expenses incurred from his former spouse whom he married in May 1998 and divorced in April 2017. She was unable to work during periods when she suffered with medical issues, which also contributed to their financial troubles. His most recent Chapter 13 filing showed many medical debts, but also federal and state tax delinquencies, secured debts, and unpaid personal loans and credit cards. The bankruptcy was discharged in July 2022. In addition, while the September 2004 Chapter 13 bankruptcy was in process, Applicant was charged with stealing funds from the Fraternal Order of Police (FOP) in his role as treasurer, as set forth below. (Answer; GE 1-10; Tr. 25-28, 40-42)

Under Guideline E, SOR ¶ 2.g alleges that in 2005, while Applicant was employed by the Sheriff's office, he stole \$3,500 from funds belonging to the FOP in his role as treasurer. In November 2007, he was sentenced to 18 months in jail, suspended, 18 months of probation, plus restitution and community service. Applicant retired from the Sheriff's office after this incident. Applicant testified that he had borrowed approximately \$6,000 from the FOP by writing checks to himself that were countersigned by another FOP member. Applicant stated that "borrowing funds" was a common practice of past FOP treasurers. A public audit of the FOP books was requested. Applicant claimed the FOP did not want to press charges against him since they were already aware he had written four unauthorized checks to himself. The FOP understood he was going to pay back the money after he received his tax refund. The sheriff, however, believed this was a serious breach of fiduciary duty and wanted the Federal Bureau of Investigation (FBI) and state police to become involved in the inquiry. Charges were filed, and during Applicant's criminal trial, he admitted to the theft of FOP funds. He said he was in the middle of a Chapter 13 bankruptcy making payments to a trustee, his wife was working minimal hours, and they were struggling to make ends meet. He acknowledged that he made a mistake and took responsibility for his poor decisions. He provided a copy of a May 2015 expungement order (AE C), and he stated in his Answer, "...attached is the expungement order that erases this MINOR infraction from my criminal history." (Answer; Tr. 29-37)

In February 2022, Applicant hired a consumer debt relief company to deal with his growing debt, and he completed his SCA in May 2022. He was to make monthly payments to the consumer debt relief program who would then negotiate with his creditors for lower interest rates, or obtain settlement offers. He was told that after six months in the program, he would be able to get a loan to consolidate his debt. He admitted that after six months, the debt relief program informed him that he did not qualify for the consolidation loan. He was also informed that the debt relief program could take five years to fully resolve his overall debt. Applicant now regrets that he hired the consumer debt relief program, but he signed a contract and is committed with the program until the end. (Tr. 45-53, 61; AE B, D)

SOR ¶ 1.g alleges Applicant is indebted on a bank credit card account that was charged off in the amount of \$2,851. Applicant admitted the debt, and he stated that after he joined a consumer debt relief program, the program intentionally made this account delinquent as a means to negotiate with the creditor. A settlement was negotiated with the creditor, and this account has been paid. (Tr. 42-45, 50-51; AE B, D)

SOR ¶ 1.h alleges Applicant is indebted on a credit card that was charged off in the amount of \$4,218. Applicant admitted this debt, and after further inquiry into his debt relief program, this consumer debt relief program obtained a settlement agreement, and this account is currently being paid with monthly payments. This debt is in the process of being satisfied. (Tr. 50-51; AE B, D)

SOR ¶ 1.i alleges Applicant is indebted on a credit card/personal loan that was charged off in the amount of \$17,069. Applicant admitted this debt and stated that the consumer debt relief program let this account go delinquent to negotiate a lower interest rate. During the hearing, he claimed this debt was already partially paid, and he had 18 months left to pay it in full. Upon further questioning and a review of his exhibits, however, Applicant acknowledged that this debt has not been settled with his debt relief program, and this charged-off account is not currently being paid. This debt is not yet resolved. (Tr. 44-53' AE B, D)

Personal Conduct:

SOR ¶ 2.c alleges that Applicant was suspended from his current employment as a security guard for approximately a week in September 2019 because he failed a covert test meant to assess whether he was properly screening bags as they came into the x-ray machine. Applicant admitted this allegation.

SOR ¶ 2.d alleges that Applicant was suspended from his current employment as a security guard for approximately a day in September 2019 because he had allowed someone through security who had multiple knives in their bag. Applicant admitted this allegation.

SOR ¶ 2.e alleges that Applicant was suspended from his current employment as a security guard for approximately a week in July 2017 after an employee in the building complained that he had made unwanted sexual advances towards her. Applicant admitted this allegation.

SOR ¶ 2.f alleges that Applicant received a verbal warning in August 2016 from his current employer because he had used his personal cell phone while he was on duty as a security guard. Applicant admitted this allegation.

SOR ¶ 2.g alleges Applicant's theft of FOP funds and conviction while acting as the FOP treasurer as discussed above.

SOR ¶ 2.b alleges that Applicant falsified his May 2022 SCA in response to the following question under the Employment Section: "For this employment have any of the

following happened to you in the last seven (7) years?” It then provided a list of reasons which included: “fired; quit after being told you would be fired; left by mutual agreement following charges or allegations of misconduct; left by mutual agreement following notice of unsatisfactory performance; received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation as security policy?” Applicant responded “No,” and deliberately failed to disclose that information as set forth in subparagraphs SOR ¶¶ 2.c, 2.d, 2.e, and 2.f, as mentioned above. Applicant denied this allegation. (Answer; GE 1, 2; Tr. 62-64)

SOR ¶ 2.a alleges that Applicant falsified his August 2022 background interview with an authorized DOD investigator when he denied that in the last seven years, he had ever received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace. The investigator provided Applicant an opportunity to discuss if anything had happened of that nature with his current employer, or if there was anything he did not disclose on the SCA that he wanted to remedy. Applicant was asked this question three times by the investigator, and all three times his response was “No.” The investigator then confronted Applicant with dates of recorded misconduct at his current place of employment. (Answer; GE 1, 2; Tr. 64-68)

In Applicant’s Answer, he stated:

I did not knowingly falsify my e-QIP [SCA]. If I had known that these records were still in my file and active, I would have entered them into the e-QIP. I was taken [a]back by the investigator’s questions because he asked me if I falsified the e-QIP regarding discipline and I stated no, why, because I was cleared of the allegations, given my money back from the suspensions and thinking that these allegations were taken out of my permanent personnel file.

According to Applicant’s January 2024 response to interrogatories, after he was confronted by the investigator with four separate instances of workplace misconduct during his August 2022 background interview, he told the investigator that he did not list these workplace incidents for two reasons: 1) He was told by management that the disciplinary actions would come out of his personnel record after one year, and 2) he was unaware that these infractions remained in his record, or else he would have provided the information voluntarily on the SCA and during the background interview. (GE 2)

During the hearing Applicant stated that he misunderstood the SCA question, which differs from the explanation provided to the DOD investigator. In his Answer and during the hearing Applicant also claimed that he had been cleared by his employer of any wrong-doing, which he also did not tell the investigator. He stated that, in essence, it was like the misconduct “didn’t happen.” He provided a collective bargaining agreement between his employer and employees, which, in part, discussed workplace misconduct. He was made aware that the collective bargaining agreement was between his employer and employees, and it did not include or prohibit the federal government from fully investigating potential individuals in process for national security eligibility. (Tr. 62-64, 71; Answer; AE C)

Applicant did not provide supporting evidence to show that he had been cleared of any misconduct by his employer. He also admitted that in December 2022 he was required to go through retraining after he and his partner allowed a bag containing a surgical razor to go through the x-ray machine. (Tr. 62-64, 71)

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 concern under Guideline F (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

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (a) Inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

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

Applicant has experienced financial difficulties for over two decades. He attributed his financial problems to his ex-wife's medical issues, her reduced work schedule, and an accumulation of medical bills, which is a situation largely beyond his control, establishing the first prong of AG ¶ 20(b). For full mitigation credit, he must prove that he acted responsibly under the circumstances.

Applicant's track record of not paying his financial obligations is evidenced by multiple bankruptcies over the past 20 years. His most recent Chapter 13 bankruptcy showed several unpaid medical debts, but there were also federal and state tax delinquencies, secured debts, and unpaid personal loans and credit cards. The bankruptcy was discharged in July 2022. What is concerning is that before his Chapter 13 bankruptcy was discharged, in February 2022, Applicant hired a consumer debt relief program to help him with his current accumulation of mounting debt. Using a consumer debt relief program can be a favorable consideration, however, the timing of his accrual of additional debt is also relevant. He was divorced in 2017 from his ex-wife suffering with medical issues, and his ongoing financial problems occurred well after his divorce. It is clear that Applicant's overspending and poor financial decisions have a role in his financial troubles.

Applicant's irresponsible spending habits are current, ongoing, and recent. He testified that he resolved one SOR debt and half of the other SOR debt through his consumer debt relief program, but the largest debt in the SOR, totaling over \$17,000, has not been resolved nor is it currently being paid. Applicant and his wife together make over \$200,000 annually. Given Applicant's lengthy history of financial issues, I find that more time is required for him to demonstrate that he is responsible, his finances are under control, and that his monetary problems are unlikely to recur. Mitigation under AG ¶¶ 20(a), 20(b), and 20(d) was not established. Applicant failed to mitigate the financial considerations security concerns.

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 lists the following personal conduct conditions that could raise a security concern and may be disqualifying as follows:

(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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(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 . . . (3) a pattern of dishonesty or rule violations.

AG ¶¶ 16(a) and 16(b) are established. The record evidence shows that Applicant deliberately did not disclose several instances of work-related misconduct on the May 2022 SCA and during his August 2022 background interview, as required. AG ¶ 16(d) partially applies since most, but not all, of the adverse information is not explicitly covered under any other guideline. AG ¶ 16(d)(3) is also applicable due to Applicant's admissions. The record shows that he had five separate incidents of workplace misconduct, to include a 2007 criminal conviction, which supports a pattern of dishonesty or rule violations.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor or so much time has passed, or the behavior is so infrequent, or 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 mitigating conditions apply. I did not find Applicant's testimony credible. He provided conflicting reasons why he did not disclose the four instances of workplace misconduct on the SCA and during his background interview. He testified that he had been cleared by his employer of the reprimands and therefore, the records were no longer in his personnel file. He stated that, in essence, it seemed to him like the misconduct never happened. He also stated during the hearing that he misunderstood the SCA question. During his August 2022 background investigation, however, Applicant told the investigator that he did not think that the disciplinary records remained in his personnel file following one year, but if he had known the government would find out about his workplace misconduct, he would have disclosed it.

Applicant did not make prompt, good-faith efforts to correct his deliberate omissions during the course of the security clearance investigation, and he failed to provide any corroborating evidence to support his claims that he was ultimately cleared of any wrong-doing at his workplace. His testimony that he borrowed money from the FOP in his position as treasurer is also very troubling, especially considering that he was experiencing financial difficulties at the time. His pattern of dishonesty and workplace misconduct casts doubt on his overall reliability, trustworthiness, and good judgment. Personal conduct security concerns are not mitigated.

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 Guidelines F and E in my whole-person analysis.

The SOR highlights a pattern of financial irresponsibility, workplace misconduct, and Applicant's behavior of trying to hide relevant and material information that the government requires to properly evaluate whether an individual possesses the integrity and good character required to protect our nation's secrets. I conclude that he has not mitigated the financial considerations and personal conduct security concerns. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant or continue his 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.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.g:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge