



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



In the matter of:	)	
	)	
[Redacted]	)	ISCR Case No. 23-02206
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Mark D. Lawton, Esq., Department Counsel  
For Applicant: *Pro se*

10/21/2024

**Decision**

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations), G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 8, 2022. On October 19, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines F, J, and E. The DCSA CAS acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on October 25, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 31, 2024. On the same day, Department Counsel amended the SOR to add SOR ¶ 2.c under Guideline J and SOR ¶ 4.a under Guideline G (Alcohol Consumption). Applicant answered the amendments to the SOR on February 7, 2024. The case was assigned to me on August 5, 2024. On August 22, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on September 25, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 12 were admitted in evidence without objection. GX 13, an unauthenticated summary of a personal subject interview on October 17, 2022, was not admitted. Applicant testified and submitted Applicant's Exhibits (AX) A through D and F through K, which were admitted without objection.<sup>1</sup> DOHA received the transcript (Tr.) on October 4, 2024.

### Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a-1.d, 1.f, 2.a-2.c, 3.b, 3.c. and 4.a. He denied the allegations in SOR ¶¶ 1.e and 3.a. His admissions are incorporated in my findings of fact.

Applicant is a 37-year-old security officer employed by federal contractors since October 2017. He has worked for his current employer since 2022. He has never married but has two sons, ages seven and five. He received a security clearance in March 2020.

Applicant purchased a home in 2018 with his then fiancée, the mother of his two sons. Shortly after they purchased the home, their relationship deteriorated, and Applicant was left with the burden of making the mortgage loan payments and paying the other household expenses. (Tr. 21) His then fiancée accused him of abusing her, and he was forced to move out of the family home. While he was awaiting a court hearing, his then fiancée moved to another state with the children. His older child has cerebral palsy, does not speak, cannot walk, and requires constant care at home. After considerable expensive litigation, he regained custody of the children. He incurred legal expenses of around \$22,000 for the custody litigation. (Tr. 22)

The SOR alleges six delinquent debts. The evidence concerning these debts is summarized below.

**SOR ¶ 1.a: automobile loan charged off for \$7,063.** In Applicant's answer to the SOR, he stated that he would begin making payments of \$250 per month in January 2024. He stated that he and his former fiancée cosigned this loan, and he has been unable to contact her because she has no current or permanent address. At the hearing, he submitted no evidence of payments or other resolution of this debt. The vehicle has been repossessed.

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<sup>1</sup> The letter "E" was omitted when marking the exhibits. There is no Exhibit E.

**SOR ¶ 1.b: credit card account charged off for \$9,067.** In Applicant's answer to the SOR, he stated that he would begin making payments of \$250 per month in January 2024. At the hearing, he submitted no evidence of payments.

**SOR ¶ 1.c: credit-card account charged off for \$4,437.** This debt and the debt in SOR ¶.1.b are with the same bank. In Applicant's answer to the SOR, he stated that he would begin making payments on this debt in January 2024. At the hearing, he testified that he contacted the creditor by telephone, but he could not make a payment arrangement with the bank because the debt had been charged off. (Tr. 36-37) The debt is not resolved.

**SOR ¶ 1.d: insurance bill placed for collection of \$199.** In Applicant's answer to the SOR, he stated that this debt had been paid. At the hearing, he testified that he paid this debt, but he submitted no documentation to support his testimony. On further questioning, he testified he was not sure if he paid it. (Tr. 37-38) The debt is not resolved.

**SOR ¶ 1.e: telecommunication bill placed for collection of \$976.** Applicant disputed this debt on the ground that it was opened by his former fiancée without authority. He submitted no evidence supporting his assertion or reflecting that the dispute was resolved.

**SOR ¶ 1.f: credit-card account place for collection of \$501.** In Applicant's answer to the SOR, he stated that this debt was paid. (GX 4) At the hearing, he admitted that he had not contacted the creditor or made any payments on this debt. (Tr. 40)

In response to DOHA interrogatories in April 2023, Applicant submitted a personal financial statement reflecting total net monthly income of \$4,000, monthly expenses of \$2,250, and a monthly mortgage payment of \$1,150. He did not list a net monthly remainder, but the numbers in the personal financial statement, if accurate, would leave him a net monthly remainder of about \$600 per month. (GX 6 at 8)

Applicant's home mortgage loan is not alleged in the SOR, but it is a significant financial obligation that contributed to his other delinquent debts. He submitted evidence that he unsuccessfully applied for a foreclosure prevention option in March 2022 (AX A). He then applied for financial assistance (AX B), contacted the mortgage lender (AX C), received financial counseling regarding his mortgage loan (AX D), and made a payment on August 27, 2024, (AX E) The September 2024 credit report reflects that his home mortgage loan was modified, and the monthly payments are current. (GX 3 at 2)

On December 8, 2019, Applicant went to a grocery store and left his two children in his parked car with the engine running. When he returned to his car, he was arrested by the police. He claimed that he was in the store for only about five minutes, but the police stated that they had observed his vehicle with the children inside for at least 15 minutes. (GX 9) He was charged with two counts (one count for each child) of committing a willful act or omission in the care of a child so gross and wanton as to show a reckless disregard for human life. He pleaded *nolo contendere* to two counts of contributing to a

child being neglected, a misdemeanor. He was convicted of the lesser offense and sentenced to 90 days in jail, suspended for two years conditioned on good behavior. A felony charge of willfully or negligently causing or permitting the life of a child to be endangered was *nolle prosequi*. (GX 8)

Between August 2019 and December 2022, Applicant was cited for multiple traffic infractions. The SOR alleges that there were “approximately” eleven infractions. Court records reflect that the infractions included speeding, following too closely, expired registration, failure to have a vehicle inspected, a seat-belt violation, and failure to display license plates. His multiple traffic infractions are alleged in SOR ¶ 2.b and cross-alleged in SOR ¶ 3.a.

On November 16, 2023, Applicant was charged with driving while intoxicated (DWI), first offense. He testified that another vehicle pulled out in front of him, and he was unable to stop. When the police arrived, they asked him to take a breathalyzer test and he declined. In February 2024, he was convicted of DWI and sentenced to 90 days in jail, with 70 days suspended, fined \$350, required to attend an alcohol safety action program (ASAP), and required to install an ignition interlock. (AX 12) His driver’s license was suspended for one year and was still suspended as of the date of the hearing. This incident is alleged in SOR ¶ 4.a and cross-alleged in SOR ¶ 2.c.

On June 6, 2022, Applicant was terminated from a job with a previous employer as an armed security officer for excessive absenteeism and tardiness. His counseling record reflected ten incidents of tardiness between October 2021 and March 2022, ranging from being three minutes late to being 88 minutes late. (GX 7) His termination is alleged in SOR ¶ 3.b.

When Applicant submitted his SCA in August 2022, he reported that he was previously employed as an armed security officer as from October 2017 to “present,” and he did not disclose his termination in June 2022. (GX 1 at 9) In his answer to the SOR, he stated that he made a mistake when completing the SCA and “must have pressed the wrong button.” At the hearing, he testified that he reviewed his SCA before submitting it but that he “must have not done a good job.” (Tr. 31) The falsification of his SCA is alleged in SOR ¶ 3.c.

## **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* at 531. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is "less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "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. 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* 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 evidence submitted at the hearing establish the two 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 are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's breakup with his live-in fiancée, his son's medical problems, his then fiancée's violation of the custody orders for his children, and the extensive legal expenses of regaining custody of his children were conditions largely beyond his control. However, he has not acted responsibly. He has incurred additional financial obligations for multiple traffic violations, lost his job for tardiness and absenteeism, and failed to take meaningful action to resolve any of the delinquent debts alleged in the SOR.

AG ¶ 20(c) is not established. Applicant received financial counseling, but it was limited to advice regarding his home mortgage loan and was not applicable to his other delinquent debts, which are not resolved.

AG ¶ 20(d) is not established. Applicant disputed the telecommunications debt alleged in SOR ¶ 1.d, but he provided no evidence supporting the basis for his dispute and no evidence that the dispute was resolved in his favor.

### **Guideline G (Alcohol Consumption)**

The concern under this guideline is set out in AG ¶ 21: "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses and can raise questions about an individual's reliability and trustworthiness."

Applicant's conviction of DWI establishes the disqualifying condition in AG ¶ 22(a): "alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder."

The following mitigating conditions are potentially applicable:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has

demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;

AG ¶ 23(c): the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and

AG ¶ 23(d): the individual has successfully completed a treatment program along with any required aftercare and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

AG ¶ 23(a) is not fully established. Applicant's DWI incident was infrequent, but it was recent and did not happen under unusual circumstances. The DWI incident, combined with Applicant's extensive record of traffic infractions, casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶¶ 23(b), 23(c), and 23(d) are not established. Except for the court-ordered ASAP program, Applicant submitted no evidence of alcohol counseling or treatment.

### **Guideline J, Criminal Conduct**

The concern under this guideline is set out in AG ¶ 30: "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."

Applicant's admissions and the evidence submitted at the hearing establish the allegation in SOR ¶ 2.a and are sufficient to raise the following disqualifying condition under this guideline:

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.

Applicant's convictions of contributing to a child being neglected and DWI are sufficient to establish AG ¶ 31(b). Applicant's record of traffic infractions, alleged in SOR ¶¶ 2.a and 3.a are not criminal offenses and not cognizable under AG ¶ 31(b). However, they are cognizable under Guideline E, discussed below.

The following mitigating conditions are potentially applicable:

AG ¶ 32(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

AG ¶ 32(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) are established for Applicant's conviction of contributing to a child being neglected, alleged in SOR ¶ 2.a. This conduct occurred almost five years ago and has not recurred. Applicant has custody of his children and has been an attentive and caring father for them.

AG ¶¶ 32(a) and 32(c) are not established for Applicant's DWI conviction. It is recent and did not occur under unusual circumstances. The suspension period for his sentence to confinement has ended, but his driver's license is still suspended. His DWI was the culmination of a long history of irresponsible driving. Insufficient time has passed to establish successful rehabilitation.

### **Guideline E, Personal Conduct**

The conduct alleged under Guideline J is cross-alleged under this guideline. The security concern under this guideline is set out in AG ¶ 15: "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. . . ."

The following disqualifying conditions are potentially applicable:

AG ¶16(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; and

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant

to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant was not a neophyte regarding security clearances. He was a mature adult who had previously held a public trust position with another government agency and received a DOD security clearance in March 2020. On the day he signed his most recent SCA, he knew he was not working for his previous employer. I found his explanation of “pushing the wrong button” unpersuasive. I conclude that the disqualifying condition in AG ¶ 16(a) is established.

The disqualifying condition in AG ¶ 16(c) is established by Applicant’s conviction of contributing to a child being neglected, termination of employment for excessive absenteeism and tardiness, multiple traffic infractions, and conviction of DWI.

The following mitigating conditions are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

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.

AG ¶¶ 17(a) and 17(c) are not established for Applicant’s falsification of his SCA. He submitted no evidence of efforts to correct the omission of his termination of employment. His falsification of his SCA was not “minor.” See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011).

AG ¶¶ 17(c) is established for Applicant’s neglectful treatment of his children alleged in SOR ¶ 2.a. His conduct occurred long ago, was infrequent, is mitigated by the passage of time without recurrence. It is not established for his multiple traffic infractions, DWI, and termination of employment for repeated tardiness and absenteeism.

## **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.

I have incorporated my comments under Guidelines F, G, J, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns under Guidelines F, G, J, and E.

## **Formal Findings**

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a-1.f: **Against Applicant**

Paragraph 2, Guideline J (Criminal Conduct): **AGAINST APPLICANT**

Subparagraphs 2.a and 2.b: **For Applicant**

Subparagraph 2.c: **Against Applicant**

Paragraph 3, Guideline E (Personal Conduct): **AGAINST APPLICANT**

Subparagraph 3.a: **Against Applicant**

Subparagraph 3.b and 3.c: **Against Applicant**

Paragraph 4, Guideline G (Alcohol Consumption):      AGAINST APPLICANT

Subparagraph 4.a:      Against 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.

LeRoy F. Foreman  
Administrative Judge