



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



In the matter of:)
)
) ISCR Case No. 24-00218
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angeles, Department Counsel
For Applicant: *Pro se*

09/30/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On February 26, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations; and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on March 27, 2024, and requested a hearing before an administrative judge. The case was assigned to me on May 7, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 27, 2024, and the hearing was convened as scheduled on August 8, 2024. The Government offered eleven exhibits, referred to as Government Exhibits 1 through 11, which were

admitted without objection. The Applicant offered one exhibit, and he testified on his own behalf. The record remained open to allow the Applicant to submit supporting documentation. He did not submit any additional information. DOHA received the transcript of the hearing (Tr.) on August 16, 2024.

Findings of Fact

Applicant is 37 years old. He is married and has three biological children and one stepchild. He has a high school diploma and is one class short of receiving his Associate degree. He is applying for the position of Aircraft Painter with a defense contractor. A security clearance is required in connection with this employment.

Guideline F - Financial Considerations

The SOR alleged that Applicant is indebted to seven creditors totaling approximately \$31,134, which include collections and charged-off accounts. In his answer, Applicant admits each of the allegations in the SOR under this guideline. Credit reports of the Applicant dated May 6, 2023; and April 25, 2024, confirm this indebtedness. (Government Exhibits 4 and 5.) In April 2023, Applicant submitted a security clearance application for the first time. He applied for a position with the defense contractor in October 2023.

Applicant explained that in 2001, he lost his job and applied for credit cards to help provide his financial support. It got to the point that he was surviving off of his credit cards, and with the interest that continued to accumulate, they got out of hand. He stopped paying them with the thought that he would eventually get back to paying them. He was not able to keep up with the payments, interests' rates and penalties, and they went into collections or were charged off. (Tr. pp. 27-28.)

He stated that his wife is not employed. He is the breadwinner for the family and currently earns about \$28 an hour in his full-time position doing home restoration. He hopes to be hired by a defense contractor to earn a better living. After paying his regular monthly expenses, he may have between \$100 and \$150 left at the end of the month. He has no checking, savings, or a retirement account. He has no money available for child support payments or for his other delinquent debts. (Tr. pp. 48-49.)

Applicant stated that in about January 2024, he hired a Credit Consolidator and left it in her hands to do whatever she could to eliminate his delinquent debts. She is a friend of the family, and he paid her \$800 for her services. Her job is to have the debt removed from his credit report, or otherwise shrink the debt. (Tr. p. 31.) Applicant submitted a three-page excerpt from his credit report that does not provide sufficient information to substantiate his claim that his debts have been disputed, resolved, or removed from his credit report. (Applicant's Exhibit A.)

The following delinquent debts became delinquent and are of security concern:

1.a. A delinquent debt is owed to LVNV FUNDIND LLC for an account placed for collection by CREDIT ONE BANK N.A. in the approximate amount of \$1,137. Applicant recognizes the debt but does not know if it was a credit card or a medical debt. He stated that the debt has been disputed and closed. The debt still appears on Applicant's credit report as outstanding. He has not paid it. The debt remains owing. (Tr. p. 31.)

1.b. A delinquent debt is owed to CAPITAL ONE for an account that was charged off in the approximate amount of \$481. This was a credit card that he opened in July 2022, and last paid in December 2022. He stated that the debt has been disputed and closed. The debt still appears on Applicant's credit report as outstanding. He has not paid it. The debt remains owing. (Tr. pp. 32-33.)

1.c. A delinquent debt is owed to JEFFERSON CAPITAL SYST for an account placed for collection by KAY WEBSITE in the approximate amount of \$426. This was a credit card he used to purchase a ring for his wife. He stated that the debt has been disputed and closed. The debt still appears on Applicant's credit report as outstanding. He has not paid it. The debt remains owing. (Tr. p. 34.)

1.d. A delinquent debt is owed to COUNTY OF LOS ANGELES in the approximate amount of \$27,147 for child support arrears. Applicant explained that his monthly child support payment for his two children who live with his previous wife is \$900 monthly. This payment is normally automatically deducted from his paycheck. For the past two years he has not made the payment and interest continues to accrue. Applicant has not paid the debt. The debt remains owing. In fact, the most recent report from the County of Los Angeles regarding his child support arrearage indicates that he actually now owes approximately \$34,482. (Government Exhibit 5.)

1.e. A delinquent debt is owed to DESIGNED RECEIVABLE SO for a medical account placed for collection in the approximate amount of \$1,094. He explained that this was for services he received when he had stomach pain and went and got it checked out. He did not have medical insurance. He stated that the debt has been disputed and closed. The debt still appears on Applicant's credit report as outstanding. He has not paid it. The debt remains owing. (Tr. pp. 35-36.)

1.f. A delinquent debt is owed to MACY'S CBNA for an account that has been charged off in the approximate amount of \$344. This is a department store credit card that he used to purchase things. He stated that the debt has been disputed and closed. The debt still appears on Applicant's credit report as outstanding. He has not paid it. The debt remains owing. (Tr. p. 36.)

1.g. A delinquent debt is owed to THD/CBNA for an account that is past due with a balance owed of approximately \$505. He initially stated that he did not recognize the debt. He does recall a Citibank credit card but does not remember when he opened

it. The debt has now grown to \$665. He stated that the credit card is still open and he is currently using it. He stated that the debt is not delinquent. (Tr. pp. 37-38.)

Guideline J – Criminal Conduct

Applicant has a history of criminal conduct involving a number of arrests, charges, and convictions. He was first arrested in August 2007 for Driving Under the Influence (DUI.) He explained that he had a few drinks at a friend's house and got behind the wheel. He was driving home when he was pulled over. He believes he was underaged at the time, only 20 years old. He was sentenced to three days in jail, three years probation, his driver's license was suspended for one year, and he was fined. (Tr. pp. 49-50.) He remembers that although his driver's license was suspended, he continued to drive a vehicle when he needed to.

In June 2008, he was arrested for Driving with a Suspended License, Failure to Prove Financial Responsibility, and Possession of Marijuana While Driving. Applicant explained that the officer that pulled him over gave him and his friend who was with him, one of two options. They could either split the cost of the citation, or they could both go to court and argue to the judge whose marijuana was in the vehicle. They chose to split the cost of the citation. The Possession of Marijuana charge was dismissed, but Applicant was found guilty on the other two charges. He was sentenced to ten days in jail, three years probation, and a fine. (Tr. p. 50, and Government Exhibit 7.)

In December 2016, he was arrested a second time for DUI. Applicant explained that at the time he was applying to become a police officer, and had passed the background check. He went out drinking to celebrate. Driving home on a rainy night, his car hydroplaned and crashed into a divider. He was found guilty, and sentenced to 4 days in jail, mandatory alcohol awareness classes, 5 years probation, a fine, and restitution. (Tr. pp. 53-54.) Applicant failed to complete the Alcohol classes as required. He stated that he subsequently turned himself in and paid the fine. (Government Exhibit 8.)

In November 2017, he was arrested for Domestic Violence. Applicant stated that he got into a heated argument with his previous girlfriend, who is the mother of his other two children. A restraining order was in effect against the Applicant at the time of the arrest, and he had violated it. He was found guilty, and sentenced to 30 days in jail, and was ordered to attend one year of Domestic Violence classes. Applicant stated that he attended Domestic Violence classes once a week for one year to satisfy this requirement. (Tr. pp. 61-65, and Government Exhibit 9.)

In November 2019, Applicant was arrested for Driving Without the Interlock Device and Driving on a Suspended License. He remembers driving with no license to pick up medicine for his grandparents. He was pulled over by the police. (Government Exhibit 10.) At the time of this arrest, Applicant stated that he knew that he had not satisfied all of the sentencing requirements related to his 2016 arrest for DUI. He was not working at the time, so he voluntarily went to court, spoke with the public defender, and asked for a deal to take care of his problems. In August 2022, Applicant was

sentenced to 180 days in jail for failing to complete the sentencing requirements associated with his 2016 arrest for DUI. Applicant had been sentenced to complete a 16-month Driver's Alcohol Program and pay the required fines, and he failed to complete these requirements. He stated that he had hoped to spend time in jail to satisfy his outstanding sentencing requirements. He spent about 30 days in jail before he was released. (Tr. pp. 57-61.)

Applicant stated that his driver's license is currently suspended. He has not yet re-enrolled in the 16-month Driver's Alcohol Program imposed by the court as a result of his 2016 arrest for DUI. Also, he has not installed the Interlock Device in his vehicle that is required to be on his vehicle for one year. The Department of Motor Vehicles also requires him to complete the Driver's Alcohol Program before they will reinstate his driver's license. Applicant stated that he does not currently drive and has not driven for about a year. He did purchase a car in May 2022, but stated that it was for his wife.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 clearance 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 as to 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

Applicant incurred delinquent debt that he has not been able to afford to pay or otherwise resolve. At this time there is insufficient information in the record to conclude that he is financially stable, or that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. There is no evidence in the

record to show that any regular monthly payments of any sort are being made toward his debts. He hired a Debt Consolidator to dispute or close the accounts, however, he has failed to submit sufficient documentation to substantiate this claim. In fact, all but one of his delinquent debts remain outstanding. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under 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;

(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 has not made a good faith effort to resolve his debts. None of the mitigating conditions apply. This guideline is found against Applicant.

Guideline J – Criminal Conduct

The security concern relating to the guideline for Criminal Conduct 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.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Three conditions apply, as discussed below:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (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; and
- (d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Appellant's criminal history includes two arrests for DUI, one in 2016 and the other in 2019, an arrest for Domestic Violence, and several arrests for Driving with a Suspended License. This conduct raises the above security concerns.

The guideline in AG ¶ 32 contains several conditions that could mitigate criminal conduct security concerns. None of the mitigating conditions are applicable in this case.

- (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;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (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.

Applicant's history of criminal conduct spans over the past twenty years. He currently has no driver's license because he has failed to comply with the court's sentencing requirements related to his second DUI in 2016. It is now 2024, and this matter is still an issue. In addition, he has not completed the 16-month Driver's Alcohol Program imposed by the court, nor has he installed the Interlock Device in his vehicle required for one year. Applicant claims that he is not driving a vehicle without a license, but he recently purchased a vehicle in 2022. Applicant has not mitigated his history of

criminal conduct. He is still in violation of the laws. He has not shown good judgment, reliability, or trustworthiness. There is insufficient evidence in the record to show that he is eligible for access to classified information. Appellant has failed to mitigate the Government's concerns under the Criminal Conduct guideline.

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 relevant facts and circumstances surrounding this case. Applicant has not addressed his financial delinquencies, and his history of criminal conduct is ongoing and very troubling. Based upon the totality of this adverse information, insufficient mitigation has been shown. Accordingly, Applicant has failed to mitigate the Financial Considerations and Criminal 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. through 1.g.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a. through 2.d.	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge