



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



In the matter of:)	
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)	ISCR Case No. 23-02905
)	
Applicant for Security Clearance)	

Appearances

For Government:
Patricia Lynch-Epps, Esquire, Department Counsel

For Applicant:
Pro se

09/25/2024

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 26, 2023. (Item 3.) On January 11, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). (Item 1.) The action was taken under Executive Order 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on April 9, 2024. He requested his case be decided on the written record in lieu of a hearing. (Item 2.) On May 6, 2024, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 8, was provided to Applicant, who received the file on May 28, 2024.

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He elected not to submit additional information. As stated, Department Counsel submitted eight Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence against Applicant's interests in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management (OPM) on February 7, 2023. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible against Applicant's interests in the absence of an authenticating witness. See Executive Order 10865 § 5. In light of Applicant's admissions, Item 4 is also cumulative. I therefore reviewed it for any potentially mitigating information that Applicant might have thought would be considered. Any such information will be set forth in this decision.

The case was assigned to me on September 16, 2024. Items 1 through 3 and 5 through 8 are hereby entered into evidence. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 42 years old and married with three children. He has an associate degree. He has been employed by a defense contractor since June 2012. (Item 2 at Sections 12, 13A, 17, and 18.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations under this guideline.

The SOR alleged that Applicant has 19 debts that were charged-off, in collection, or past due, in the total amount of approximately \$24,500. (SOR 1.a through 1.s.) The existence and amount of these debts is supported by his admissions to all SOR allegations in his Answer. The debts are also confirmed by credit reports submitted by the Government dated February 10, 2023; and August 18, 2023. (Items 6 and 7.) In addition,

the existence of the debts is supported by Applicant's answers to a set of financial interrogatories sent to him by DCSA CAS on August 1, 2023. (Item 5.)

Applicant described the reason for his debt issues on page 9 of Item 5, "My financial hardship [occurred] during COVID when my spouse was out of work for a 2 [year] time period. I was the only one working trying to maintain the household responsibility. In result, my credit card debt increased."

The status of the debts is as follows:

1.a. Applicant admitted that he is indebted to a creditor for a charged-off account in the amount of \$10,268. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 2.)

1.b. Applicant admitted that he is indebted to a creditor for a charged-off account in the amount of \$2,710. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 3.)

1.c. Applicant admitted that he is indebted to a creditor for a charged-off account in the amount of \$1,723. He attached to his interrogatories responses a letter dated August 2, 2023, from the collection agent of the creditor indicating that he had entered into a payment agreement regarding this debt. The agreement required him to make ten monthly payments of \$120.80 to resolve the debt. No additional evidence was supplied to show that he had fulfilled his payment arrangement. This debt is not resolved. (Item 5 at 3, 12.)

1.d. Applicant admitted that he is indebted to a creditor for a charged-off account in the amount of \$1,276. He attached to his interrogatories responses a letter dated August 8, 2023, from the collection agent of the creditor indicating that he had entered into a payment agreement regarding this debt. The agreement required him to make four monthly payments of \$149.36 to resolve the debt. No additional evidence was supplied to show that he had fulfilled his payment arrangement. This debt is not resolved. (Item 5 at 4, 13.)

1.e. Applicant admitted that he is indebted to a creditor for an account placed for collection in the amount of \$999. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 5.)

1.f. Applicant admitted that he is indebted to a creditor for a charged-off account in the amount of \$1,262. He did not indicate in his Answer that he had paid or made arrangements to pay this debt. It is not resolved.

1.g. Applicant admitted that he is indebted to a creditor for an account placed for collection in the amount of \$899. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 2.)

1.h Applicant admitted that he is indebted to a creditor for an account placed for collection in the amount of \$822. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 5.)

1.i. Applicant admitted that he is indebted to a creditor for a charged-off account in the amount of \$597. He did not indicate in his Answer that he had paid or made arrangements to pay this debt. It is not resolved.

1.j. Applicant admitted that he is indebted to a creditor for an account that has been charged off in the amount of \$550. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 6.)

1.k. Applicant admitted that he is indebted to a creditor for an account that has been charged off in the amount of \$487. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 3.)

1.l. Applicant admitted that he is indebted to a creditor for an account placed for collection in the amount of \$276. He did not indicate in his Answer that he had paid or made arrangements to pay this debt. It is not resolved.

1.m. Applicant admitted that he is indebted to a creditor for an account placed for collection in the amount of \$42. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 6.)

1.n. Applicant admitted that he is indebted to a creditor for an account placed for collection in the amount of \$18. He did not indicate in his responses to interrogatories or Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 6.)

1.o. Applicant admitted that he is indebted to a creditor for an account that is past due in the amount of \$153. He did not indicate in his Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 2.)

1.p. Applicant admitted that he is indebted to a creditor for an account that is past due in the amount of \$863. He did not indicate in his Answer that he had paid or made arrangements to pay this debt. It is not resolved. (Item 5 at 2.)

1.q. Applicant admitted that he is past due on his mortgage in the amount of \$1,508. He did not indicate in his Answer that he had paid or made arrangements to pay this debt. It is not resolved.

1.r. Applicant admitted that he is indebted to a creditor for an account that is past due in the amount of \$66. He did not indicate in his Answer that he had paid or made arrangements to pay this debt. It is not resolved.

1.s. Applicant admitted that he is indebted to a creditor for an account that is past due in the amount of \$46. He did not indicate in his responses Answer that he had paid or made arrangements to pay this debt. It is not resolved.

Applicant submitted a budget and information as to his salary. They are attached to his interrogatory responses. The documents show that he has approximately \$280 a month in discretionary income. However, he did not submit any information as to how he intends to resolve his indebtedness. (Item 5 at 10-11.)

Applicant also elected not to submit any information about his work performance or ability to safeguard classified information. I am unable to make a credibility assessment as he elected not to have a hearing.

Paragraph 2 (Guideline E: Personal Conduct)

The Government alleged in this paragraph that Applicant is ineligible for clearance because he falsified material facts during the clearance screening process. Applicant did not admit or deny the sole allegation under this paragraph, which is considered a denial.

Applicant filled out an e-QIP on January 26, 2023. (Item 3.) Section 26 of that questionnaire concerned Applicant's financial record and has several subparts. As stated in the SOR, with regard to this case, Applicant was asked if, in the seven years before the date he filled out the questionnaire, he had bills or debts turned over to a collection agency, or had an account suspended, charged off or cancelled for failing to pay as agreed. Applicant answered these questions, "No." These were false answers to relevant questions about Applicant's financial history.

Applicant was interviewed by an investigator from OPM on February 27, 2023. The investigator asked Applicant why he failed to list any of his delinquent debts on his e-QIP. In response, the ROI of the interview stated with regard to each debt on the SOR, "Subject [Applicant] did not list this account, because he did not know it was required to be listed and he is working at paying off his debt." (Item 4.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has incurred over \$24,000 in past-due indebtedness over the past several years. He has not paid any of the debts alleged in the SOR. He did present evidence that he had established payment arrangements with two of his creditors. However, he did not present evidence that he had made any payments in fulfillment of these arrangements. No information was presented that he had any plans to resolve the remaining seriously past-due or charged-off indebtedness. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or 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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The evidence does not establish that any of the above mitigating conditions apply to Applicant. He failed to submit sufficient evidence that would tend to support any of them. There is some evidence that these debts may have been exacerbated because of the COVID pandemic. However, there is little to no evidence that he has acted responsibly under the circumstances since the end of the pandemic. His conduct, or lack thereof, does not show good judgment, reliability, or trustworthiness on Applicant's part. There is no basis in the record evidence for me to find that Applicant has mitigated the security concerns arising from his financial situation. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline E: Personal Conduct)

The 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The following disqualifying condition is applicable under 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.

Applicant's e-QIP contained incorrect information concerning his finances. The record is clear that Applicant knew of the delinquent debts. The stated disqualifying condition applies to the facts of this case because of those omissions.

The following conditions are potentially mitigating under AG ¶ 17:

(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; and

(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.

In regard to the financial question, Applicant stated to the OPM investigator that he did not know he had to list his delinquent debts. The question is straight-forward, and Applicant was certainly knowledgeable he had bad debts. His explanation is insufficient to support any argument that this was a mistake instead of an intentional act. Based on the foregoing I cannot find that Applicant mitigated the allegations under this guideline. Guideline E is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated the concerns over his considerable past-due indebtedness, as well as the intentional falsification of his security clearance questionnaire. The significant potential for pressure, coercion, or duress remains undiminished. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.s:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

WILFORD H. ROSS
Administrative Judge