



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-02150
)
 Applicant for Security Clearance)

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

12/18/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations, 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 February 21, 2023. On December 15, 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 December 27, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 25, 2024, and the case was assigned to me on August 5, 2024. On September 30, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted on October 30, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 12 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through U, which were admitted without objection. At Applicant's request, I kept the record open until November 13, 2024. He did not submit any additional evidence. DOHA received the transcript (Tr.) on November 7, 2024. The record closed on November 13, 2024.

Findings of Fact

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

Applicant has been offered a job by a federal contractor, contingent on obtaining a security clearance. He was employed by a federal contractor as a contract specialist from April 2021 to October 2022. He has been self-employed as a commercial beekeeper since June 2012. His SCA reflects that he received clearances in October 1980 and February 1985.

Applicant is 62 years old. He received an associate degree in June 1986 and a bachelor's degree in June 1994. He married in December 1991 and separated in December 2017. He has a daughter, two sons (one adopted), a stepdaughter, and a stepson.

Applicant served on active duty in the U.S. Army from October 1980 to July 1992. He received security clearances in October 1980 and February 1985. In April 1990, he was selected for appointment as a warrant officer. However, his attendance at the warrant officer candidate school was cancelled after he was accused of disrespect to a superior officer.

The SOR alleges six delinquent debts. SOR ¶¶ 1.a, 1.b, and 1.c allege credit-card debts to the same creditor that were charged off for \$26,028; \$16,791; and \$5,702. The last payments on these debts were in October and December 2019. Applicant denied these debts in his answer to the SOR. He testified that immediately after he was interviewed by the security investigator in April 2023, he contacted the creditor for the three debts about resolving them. (Tr. 16-17) He submitted documentation that in January 2024, the creditor for the three debts offered to settle the debts for less than the full amount. In February 2024, Applicant agreed to make monthly payments of \$250 on the debt alleged in SOR ¶ 1.a; \$250 per month on the debt alleged in SOR ¶ 1.b; and \$475 per month on the debt alleged in SOR ¶ 1.c. In May 2024, he was notified that a payment of \$250 was received for the debt alleged in SOR ¶ 1.a and that the debt in SOR ¶ 1.c was resolved. (AX M; AX N)

SOR ¶ 1.d alleges a debt of \$4,864 to the Social Security Administration that was placed for collection. This debt was a result of Applicant's conviction of fraud, and it was collected by an involuntary offset against future entitlements. (AX B; AX K)

SOR ¶ 1.e alleges a debt to an insurance company placed for collection of \$98 After Applicant was questioned by a security investigator about his delinquent debts, he settled this debt for less than the full amount. (GX 12)

SOR ¶ 1.f alleges a child-support arrearage of \$5 that was placed for collection. Applicant apparently fell behind on his child-support payments while he was incarcerated. He submitted documentary evidence that his child-support payments were current. (AX C)

In July 1991, while on active duty in the U.S. Army, Applicant was charged with wrongfully damaging private property in violation of Article 109 of the Uniform Code of Military Justice (UCMJ). He was tried by a special court-martial and found not guilty. (GX 7) In November 1991, he was tried by a special court-martial for failure to go to his appointed place of duty at the time prescribed in violation of Article 86, UCMJ; assaulting his daughter, a child under the age of sixteen, in violation of Article 126, UCMJ; failure to obey a lawful order in violation of Article 92, UCMJ, willful damage to private property in violation of Article 109, UCMJ; and failure to pay a just debt, in violation of Article 134, UCMJ. He was found not guilty of assaulting his daughter but convicted of the other offenses. He was reduced from staff sergeant (pay grade E-6) to sergeant (pay grade E-5) and reprimanded. His case was referred to the family advocacy case management team. The team determined that the allegation of child abuse was unsubstantiated, but the reports of child neglect were substantiated. (GX 9) His conviction by court-martial was alleged in SOR ¶ 2.g, which he admitted.

In April 1992, Applicant was administratively discharged under other than honorable conditions for misconduct. (GX 8) He appealed to the Army Discharge Review Board (ADRB). In September 2006, the ADRB concluded that his discharge was inequitable "based on the overall length and quality of the applicant's service, circumstances surrounding the discharge, his post-service accomplishments and the time that has elapsed since his discharge." He then appealed to the Army Board for Correction of Military Records (ABCMR). The ABCMR noted that it is precluded from changing the findings of the court-martial and is precluded from changing the severity of his sentence. However, it corrected his record to show service until July 1992 instead of May 1992 and changed the separation code and reason for separation to "Separation for Expiration of Service Obligation." His DD Form 214 was administratively reissued on October 12, 2008, to reflect that he was a sergeant (pay grade E-5) upon separation, and the characterization of his service was upgraded to honorable. (GX 2, Exhibits H and I; AX H)

In November 2002, Applicant was indicted for perjury. He told a security investigator that a federal agent accused him of lying during a child-custody hearing, but he could not remember the basis for the agent's accusation. The subject matter of the

hearing is not reflected in the record. (GX 2, Exhibit A) In February 2004, he pleaded not guilty and was convicted of an amended charge of disorderly conduct and sentenced to 30 days in jail, suspended. (GX 6) This incident is alleged in SOR ¶ 2.f, which Applicant admitted.

In December 2003, Applicant was convicted of false advertising and impersonating a federal agent. He explained to a security investigator that he posed for a photograph in front of the official seal of a federal agency for use in a newspaper. He was placed on probation for one year and paid a fine. (GX 2, Exhibit A) This incident is alleged in SOR ¶ 2.e, which Applicant denied.

In January 2006, Applicant was arrested for embezzlement. He told a security investigator that he owned a private security company, and a client accused him of keeping a retainer fee after the client withdrew from the case. (GX 2, Exhibit A) He was convicted of obtaining money under false pretenses and was placed on probation for two years. (Tr. 22) This incident was alleged in SOR ¶ 2.d, which Applicant admitted.

In September 2016, Applicant was indicted for fraudulently obtaining Social Security benefits. He was charged with theft of government property (Counts 1 and 2), concealment of an event affecting a right to a benefit (Count 3), false statement for use in determining a right to a benefit (Count 4), fraudulent acceptance of benefits (Count 5), and submitting a false writing (Count 6). (GX 4) He pleaded not guilty to all counts but was convicted of Counts 2, 3, and 4. He told a security investigator that he was asked to provide a tax return to support his claim for benefits, and he submitted a tax return for the wrong year. (GX 2, Exhibit A) He was sentenced to imprisonment for 21 months, followed by probation for three years. He was released from prison in June 2019. His probation terminated in June 2022. (GX 3; AX O) Applicant's indictment, conviction, and sentence were alleged in SOR ¶¶ 2.a, which he admitted.

SOR ¶¶ 3.a, 3.b, and 3.c allege that Applicant falsified his February 2023 SCA by answering "No" to questions asking whether he had ever been charged with a felony offense and not disclosing that he was charged with perjury in 2002 (SOR ¶ 3.a), charged with felony embezzlement in January 2006 (SOR ¶ 3.b), and arrested in May 2003 for "giving conflicting testimony." (SOR 3.c) Applicant denied these allegations, claiming that he believed he was not required to disclose conduct that was more than ten years old. In support of his denial, he submitted a copy of the instructions he received from his facility security officer, which stated, "You must give information that at a minimum dates back ten years or your eighteenth birthday, whichever comes first." (AX U)

SOR ¶ 3.d alleges that Applicant falsified his SCA by answering "No" to a question asking if he had ever been charged with an offense involving firearms or explosives and failing to disclose that he was arrested in September 2003 for transporting a firearm while subject to a protective order. Applicant admitted it during his security interview in April 2023. (GX 2, Exhibit A) The charge was *nolle prosequi*. At the hearing, Applicant denied this allegation and testified that he had no recollection of having been arrested for this offense. (Tr. 30) He denied this allegation in his answer to the SOR.

SOR ¶ 3.e alleges that Applicant violated the terms of his supervised release in March 2022, by leaving the jurisdiction and traveling to another state without obtaining proper permission. Applicant admitted this allegation. He explained that he had a customer who needed him to deliver 125 colonies of honeybees, and that he was unable to contact his probation officer for permission before making the trip. (Tr. 31) His probation violation was discovered when the owner of an orange grove accused him of stealing oranges. He submitted evidence that he and the owner had traded oranges for honey for many years. He did not know that the original owner had sold the property. He went to the grove to retrieve some equipment and took 23 oranges. The new owner called the sheriff, and Applicant was charged with trespassing, larceny, and a parole violation. He was convicted and sentenced to three days in jail. The charges arising from events at the orange grove are alleged in the SOR ¶ 2.b, which Applicant admitted.

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).

The evidence establishes two following 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; and

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

AG ¶ 20(a) is partially established. Applicant's delinquent debts were recent and frequent, but they occurred in part because of the economic downturn due to COVID-19, which is unlikely to recur. They also occurred because of his incarceration. Based on his lengthy criminal record, I am not satisfied that incarceration will not recur.

AG ¶¶ 20(b) and 20(d) are not established. Applicant's incarceration was due to his criminal conduct, but the economic downturn was a condition largely beyond his control. However, he did not act responsibly. The debt alleged in SOR ¶ 1.d was collected by an involuntary offset against subsequent benefits. Payment of a debt by involuntary offset does not constitute a "good-faith effort." Although Applicant was released from prison in June 2019, he took no action to resolve his debts until he was questioned about them by a security investigator in June 2023. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

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."

The following disqualifying conditions are relevant:

AG ¶ 31(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;

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; and

AG ¶ 31(e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

AG ¶ 31(a) is established by Applicant's convictions by courts-martial while on active duty; probation violations in November 2002, September 2003, and March 2022; and a charge of impersonating an FBI agent in December 2003.

AG ¶ 31(b) is established by Applicant's indictment for perjury in November 2002, conviction of false advertising and impersonating a federal agent in December 2003, arrest for embezzlement in January 2006, and indictment and conviction for fraudulently obtaining Social Security benefits in September 2016.

AG ¶ 31(e) is not established. Applicant's discharge under other than honorable conditions was overturned by the ADRB.

The following mitigating conditions are potentially relevant:

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 not established. Applicant has a long record of criminal conduct. He was on probation until June 2022. Insufficient time has passed to establish rehabilitation.

Guideline E, Personal Conduct

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition is AG ¶ 16(a):

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.

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).

At the hearing, Applicant claimed that he did not disclose his criminal record because it occurred more than ten years before he submitted his SCA. He relied on the instruction sheet provided by his facility security officer, informing him, "You must give information that at a minimum dates back ten 10 years or your eighteenth birthday, whichever comes first." At the hearing, he argued that he was instructed to go back ten years. However, on its face, this instruction sheet informs applicants that they must disclose information from the past ten years "at a minimum," meaning that they must go back *at least* ten years. Applicant was not a neophyte in the security clearance process. He is a well-educated, mature adult who had completed the security clearance process at least twice before. The record is replete with Applicant's efforts to minimize the seriousness of his criminal conduct. I found his explanation for failing to disclose his criminal record unconvincing, and I conclude that AG ¶ 16(a) is established for all of the falsifications alleged under this guideline.

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;

AG ¶ 17(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 aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; 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) is not established. Applicant provided no evidence of efforts to correct the omissions in his SCA until he was confronted with the evidence.

AG ¶ 17(b) is not established. Even if Applicant misunderstood the information sheet provided by his facility security officer, he made no effort to correct the information when he was informed of the requirement to disclose it.

AG ¶ 17(c) is not established. Applicant's falsifications were recent, because they involved the SCA under adjudication. He falsified multiple parts of the SCA. His falsifications were not minor, because they undermined the integrity of the security clearance process. Falsification of a security clearance application "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

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, 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 Guidelines F, J, and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his delinquent debts, criminal conduct, and personal conduct.

Formal Findings

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

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

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

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

Subparagraphs 2.a-2.g: **Against Applicant**

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

Subparagraphs 3.a-3.c: **Against Applicant**

Subparagraph 3.d: **Against Applicant**

Subparagraph 3.e: **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