



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



In the matter of:)	
)	
)	ISCR Case No. 23-01222
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison P. O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

11/19/2024

Decision

MURPHY, Braden M., Administrative Judge:

The Government alleged security concerns under Guideline F (financial considerations and Guideline E (personal conduct). In full consideration of the record evidence, I conclude that personal conduct security concerns are not established, but Applicant did not provide sufficient evidence to mitigate financial security concerns arising from his delinquent debts. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCA) on September 27, 2021, and again on July 13, 2022. On August 2, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The DOD took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 22, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on May 22, 2024. On June 5, 2024, DOHA issued a notice scheduling the hearing for July 2, 2024. The hearing was to occur by video teleconference through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 9. Applicant testified and submitted Applicant's Exhibits (AE) A through C. All exhibits were admitted without objection. I left the record open until July 31, 2024, to allow Applicant the opportunity to submit additional exhibits. He timely submitted seven documents, marked as Post-Hearing (PH) Exhibits (Ex.) 1 through 7, per his post-hearing exhibit list. They are all admitted without objection. DOHA received the transcript (Tr.) on July 11, 2024.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.e with a brief narrative statement. He admitted SOR ¶¶ 2.a and 2.b without comment. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He earned a bachelor's degree in 1999 and a master's degree in 2004. He has about 24 years of Army service, including active duty both in enlisted service (1986-1990) and as a commissioned officer (1990-2001), and in the Reserve from 2001 until he retired honorably as a major in 2010. Since late 2011, he has been employed in the human resources (HR) field, for a variety of employers in the private sector. He was unemployed for several months in mid-2018 due to a reduction in force. He began working for his current employer and clearance sponsor in about May 2021. He held a clearance during all his years in the Army as well as more recently. He currently earns \$41 an hour and works full time. (GE 2, GE 4; Ph. Ex. 2, Ph. Ex. 3; Tr. 20, 41-45, 61-62, 72-76, 101-102, 114)

Applicant submitted an SCA in September 2021, an application for access to classified information at the secret level. (GE 2) That application was granted in January 2022. In July 2022, he submitted an updated SCA, in applying for top secret level access, which he needs to become a Facility Security Officer (FSO). He disclosed prior clearances from his time in the Army, in 1987 and 2002 on both SCAs, and added the granting of his 2021 SCA, in January 2022, on his most recent SCA. GE 1; Tr. 26, 46-47, 52, 113-114)

Applicant's first two marriages (1989-2007 and 2008-2010) ended in divorce. He has been married to his third wife since 2020. He has four grown children. (GE 1) Applicant and his wife are currently in the process of divorcing. (AE C; Tr. 29-34)

The five Guideline F allegations in the SOR (SOR ¶¶ 1.a – 1.e), all debts to private creditors, total about \$44,691. The debts are listed on credit reports from November 2021, July 2022, and May 2023. (GE 5, GE 6, and GE 7).

Applicant said his divorce is due to the financial hardship resulting from several automobile repossessions. He became financially overextended and could not pay all his debts. He said he fell behind on his debts in 2019 or 2020. He also blamed his wife and said he trusted her financially and should not have. He said she has mental health issues and is bipolar. But he acknowledged that he is responsible for the debts. His plan is to address his current debts first, reduce his revolving credit to zero, and then address his SOR past-due debts. (Tr. 30, 38-39, 48-50, 57, 70-71, 106-109)

SOR ¶ 1.a (\$18,456) is an automobile financing account that has been charged off by Bank C. (GE 5, GE 9) Applicant purchased a jeep in about 2017 or 2018. He said his third wife spent the money allocated to the car payments, and about a year later, before they separated, the vehicle was repossessed. (PH Ex. 7; Tr. 62-65, 91-92) Applicant said during the hearing that he expected to be found responsible for only one half of this marital debt in the parties' anticipated divorce settlement agreement. (Tr. 40-41, 109) However, the signed July 2024 separation agreement about distribution of marital assets and debts reflects that he is now responsible for this debt in full. (PH Ex. 7) This debt remains pending.

SOR ¶ 1.b (\$7,769) is an account for past-due rent that has been charged off by an apartment complex where Applicant and his third wife lived from about 2020 to 2022. (GE 5, GE 6; Tr. 63, 65) Applicant broke the lease after she moved out. As of June 2022, Applicant was paying a debt collector \$150 per pay period, but he did not make many of the payments. He has not made payments for about a year, and now owes \$7,994. (GE 8, GE 9; Tr. 65-66) He said during the hearing that he expected to be found responsible for only one half of this marital debt. (Tr. 30-36, 66, 92, 109) However, Applicant is now responsible for this debt, according to the July 2024 settlement agreement he and his wife signed relating to their post-divorce distribution of marital assets and debts. (PH Ex. 7) This account remains unresolved.

SOR ¶ 1.c (\$7,301) is an account that has been charged off by an automobile financing company. (GE 5, GE 6, GE 7) This account was for a car Applicant purchased in June 2019, during his third marriage. The amount alleged is what he owes after the car was repossessed and sold at auction in early 2021. As of June 2022, Applicant was attempting to contact the creditor to arrange a repayment plan, but he was not successful since the debt was charged off. He has made no payments and has no arrangement in place because he said the creditor will not accept a payment plan. (GE 8; Tr. 39-40, 66-68, 107) This account remains pending.

SOR ¶¶ 1.d (\$7,255) and 1.e (\$3,910) are two accounts that have been charged off by the same creditor, Credit Union 1. (GE 5, GE 6, GE 7) The first account is for a jet ski Applicant purchased and the second is for a credit card. He was employed by Credit Union 1 at the time. As of June 2022, he was paying debt collector G \$150 per pay period.

(GE 4 at 9, GE 8) He did not keep up with these payments, choosing instead to address current debts. (Tr. 36-38, 69-72, 107-109)

After the hearing, Applicant reengaged with debt collector G to repay three past-due accounts with Credit Union 1. The two SOR accounts are likely included, though this is not entirely clear. The third account, for a second repossessed car, is not alleged. (Tr. 82-84-85, 92-93; GE 9) As of July 2024, he owed \$3,732, \$11,935, and \$5,914 on the three accounts, respectively, for a combined total of \$21,581. In mid-August 2024, he was to begin paying \$200 twice a month. (PH Ex. 6) These accounts are not resolved.

AE A is an excerpt from a June 2024 credit report or credit monitoring service. It shows that Applicant has about \$8,000 in credit card debt. One of the debts, a military credit account, had a listed balance of \$6,876, later reduced to \$6,320. (AE A, AE B; Tr. 15, 27-29) Applicant noted the absence of any automobile loan, student loan, or mortgage. (AE A; Tr. 27, 76-79) He said he had about \$120,000 in student loans but he said this debt it was largely forgiven through the U.S. government's public service loan forgiveness program. (Tr. 27, 49-51, 53-54) He said he was aggressively working to pay down his overall debt load over the last 12 months. (Tr. 57)

Applicant also disclosed that he has a balance of about \$20,000 in past-due federal income tax debt for tax year 2022. He said this is due to under withholding and because his wife would not file jointly with him. He learned of the debt about four months before the hearing, when he filed his 2023 taxes, and he has been making \$300 payments per pay period since then to resolve the balance. He has no unfiled federal income tax returns and his home state has no state income tax requirements. (Tr. 81-82, 92-95)

The day after the hearing, Applicant was to move into a one-bedroom apartment. He lived in his prior home, a room rental in a house, for six months, paying \$800 in monthly rent. In the past, he has also lived on a houseboat, paying slip rent of \$600 a month (Tr. 2, 55, 76, 111-113) He has about \$2,000 in his checking account and about \$7,000 in a retirement account. He has not pursued formal credit counseling but he has a financial accountant who will assist him going forward. He keeps his household budget on a spreadsheet. (Tr. 96-100)

Applicant did not disclose any delinquent debts on his September 2021 SCA. (GE 2) After his 2021 SCA, he had a background interview on or about December 9, 2021. The interview summary reflects that, when he was asked about the questions in Section 26 of the 2021 SCA, about his financial record, he "readily provided" information various delinquencies. (GE 3 at 5; Tr. 83-84) Further, when asked why he had not listed his financial issues on his 2021 SCA, Applicant replied that he had. The summary reflects that Applicant "then held up his version of the [2021 SCA], which showed detailed financial information listed on the SF-86." Automobile repossessions and a charged-off credit card account were listed. Applicant was requested by the interviewing agent to provide a copy of that portion of his 2021 SCA. (GE 3 at 6) (Tr. 86-90)

Applicant had another background interview on or about December 15, 2021. The summary reflects he told the interviewing agent he should have exercised more due diligence when completing his 2021 SCA. He accepted blame for any misunderstanding and said he did not intend to deceive or intentionally omit any information about his financial circumstances. He discussed the delinquent status of several of his accounts. (GE 3 at 7) He had another interview on or about December 21, 2021. The summary reflects that he provided a copy of the “financial details in Section 26 of his SF-86,” as requested in his first interview. During his testimony, Applicant affirmed the interview summaries, but he stated he no longer has a copy of his version of the 2021 SCA he showed during his later interviews. (GE 3 at 8)

Applicant’s secret clearance was granted in about January 2022. (GE 2). In July 2022, Applicant submitted an updated SCA, for top secret access. (GE 1) As with his 2021 SCA, he did not disclose any financial delinquencies in answer to any questions under Section 26 (Financial Record) on his July 2022 SCA. These omissions are the basis for the Guideline E allegations in the SOR. (SOR ¶¶ 2.a, 2.b) In his SOR response, Applicant admitted these allegations without further comment.

During his testimony, Applicant acknowledged that he had charged off debts that he should have listed on his 2021 SCA, but he said he did not list them because he thought they were closed. As to his 2022 SCA, he said he researched his credit report at the time but looked only at open accounts, not closed accounts. He accepted full responsibility for his responses on both SCAs. He acknowledged his error but said there was no intent to deceive the government by failing to disclose his debts on his 2022 SCA. (Tr. 59-60, 90-91)

Applicant handles several million dollars in annual payroll. He has also been an assistant facility security officer (AFSO) for the last three years. He assists employees in the clearance application process among other security responsibilities. He tells clearance applicants about the importance of completeness and accuracy and “to leave nothing out.” (Tr. 25-26, 103-105) After the hearing, he documented appropriate security trainings for his job. (Tr. 105-106; PH Ex. 5)

Applicant retired as a major (O-4). He earned three Meritorious Service Medals, four Army Commendation Medals, the Joint Service Achievement Medal, three Army Achievement Medals, and appropriate service medals. (PH Ex. 2 - 4) He said his military retirement pay and disability compensation is a combined \$4,755 a month. (Tr. 102-103)

Applicant is proud of his service to the country, both in and out of uniform, and of his many years with a clearance. He understands that his finances are “a mess” but says he plans to get them under control, and he asks that the “whole person” be considered. (Tr. 60-61, 115-116, 125)

The company president of Applicant’s current employer attested to his exceptional competence, integrity, and reliability. The reference regards him as a highly skilled and dedicated professional with a strong work ethic and “a deep commitment to the security

protocols and standards required for handling classified information” and he recommends Applicant for a clearance. (Ph. Ex. 1)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of several 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 access to classified information 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

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

Applicant fell behind on several accounts during his third marriage, now in divorce proceedings. They include several automobile repossessions and past-due rent. The SOR debts are listed on credit reports in the record, AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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.

No mitigating conditions fully apply. Applicant became financially overextended and could not pay all his debts, beginning in about 2019 or 2020. His third wife's financial mismanagement and mental health issues may have played a role as well, but he accepted responsibility for the debts alleged. Applicant has not demonstrated that AG ¶ 20(b) should fully apply. While he hoped that his wife would be held responsible for 50% of the debts in their settlement agreement, this did not come to pass, and he is fully responsible for all of them. AG ¶ 20(e) does not apply. Applicant stressed his efforts to minimize his current debt load and said his plan is to address his current debts first, reduce his revolving credit to zero, and then address his SOR past-due debts. His SOR debts are therefore ongoing and unresolved. AG ¶ 20(a) does not apply. And he has taken little to no action thus far to address these debts. His plan to address his current debts first is not sufficient evidence of good-faith action towards the creditors for his past-due debts. Applicant needs to establish a documented track record of steady payments towards these alleged debts in order to mitigate the security concern shown. AG ¶ 20(d) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Under Guideline E, the SOR alleged that Applicant allegedly falsified his 2022 SCA by failing to disclose any of the SOR debts. He should have done so, given the wording of the financial questions under Section 26 of his 2022 SCA. However, I also credit the fact that the interview summary of Applicant's first interview (GE 3, in December 2021) shows that he "readily provided" the information when asked about it. He also provided his own copy of his 2021 SCA to discuss with the interviewing agent – a document showing he disclosed various delinquencies. While this copy of the 2021 SCA is not in the record, the interview summary suggests that Applicant did not deliberately fail to disclose those debts on his 2022 SCA, because his prior disclosures are not the acts of someone seeking to deceive the Government intentionally. While he should have been more candid on his 2022 SCA, I cannot conclude that his omissions on that application

were deliberate. I make this finding notwithstanding the fact that he “admitted” the SOR allegations in his SOR response without further comment. I conclude that AG ¶ 16(a) does not apply and find SOR ¶¶ 2.a and 2.b in Applicant’s favor.

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 the 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(a), 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 considering all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

I credit Applicant’s long years of uniformed service to the country and his many decorations. I also credit his other whole-person evidence of subsequent work, including for his current employer in the HR and security fields. However, this does not outweigh the security concerns shown by his history of delinquencies. His delinquent debts will remain a security concern until he shows a documented track record of good-faith efforts to resolve them. The record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude that while Guideline E personal conduct security concerns are not established, Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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-1.e:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

Considering all the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge