



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



In the matter of: )  
)  
) ISCR Case No. 24-00545  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Troy Nussbaum, Esq., Department Counsel  
For Applicant: *Pro se*

11/27/2024

**Decision**

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the criminal conduct, personal conduct, or financial considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 3, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J, criminal conduct, Guideline E, personal conduct, and Guideline F, financial considerations. On June 3, 2024, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on August 14, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded thirty days from receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on August 19, 2024, but he did not respond to it. The case was assigned to me on November 14,

2024. The Government exhibits included in the FORM (Items 1-11) are admitted in evidence without objection.

### **Findings of Fact**

Applicant is a 46-year-old employee of a defense contractor for whom he has worked since May 2023. He earned a bachelor's degree in 2012. He has been married since September 2021, after having been previously married and divorced. He has a 26-year-old son and an 11-year-old stepson. He served on active duty with the U.S. Navy from 1998 until 2009, when he earned an honorable discharge. (Items 3, 4)

In October 2021, police in State A arrested Applicant and charged him with inflicting corporal injury on his wife. The evening before, Applicant was intoxicated. He and his wife argued, and Applicant struck her in the face with his hand, causing red colored bruising to one of her eyes. He also shoved her to the ground near the stairs in their home. Applicant left their apartment and slept in his car. The next morning, his wife called the police when he began arguing with her again and would not respect her desire for him to leave. Applicant lied and told responding police that he had not touched his wife, but the police officer noted the bruising around her eye. The police officer also reported that Applicant's wife had video footage of Applicant shoving her to the ground. She did not have time to record him striking her in the face but was able to start recording shortly afterwards. Police reviewed the recording, and it corroborated that Applicant shoved her. (Items 3-5, 7-9)

Applicant pleaded not guilty to the aforementioned charge. As he is a military veteran, the relevant court allowed him to enter into a Veteran's Affairs Military Diversion Program (MDP). The court stayed his criminal charges pending his completion of the MDP and required him to complete eight hours of community service and a 52-week domestic violence class. The court also issued a criminal protective order in favor of Applicant's wife that is set to expire in December 2024. (Items 3-5, 7-9)

In his certified July 2023 security clearance application (SCA), Applicant disclosed that he had been arrested and charged for this incident because of an argument with his wife. He did not disclose that he had struck her in the face or shoved her to the ground. In the SCA, he also did not disclose that he was intoxicated at the time of the incident, which triggered the requirement of an additional disclosure in the SCA. During his October 2023 security interview (SI), the contents of which he authenticated, Applicant lied to the DOD investigator and said he had not touched his wife during the October 2021 incident. He did acknowledge that he was intoxicated during the incident. He claimed he was scheduled to complete the MDP by August 2024, and that he had complied with the MDP and court requirements. However, there is no evidence that he has completed either. As of February 2024, the court issued a warrant for the same charges filed against him in October 2021. It is unclear whether these are additional charges from another incident or whether the court issued this warrant for Applicant's failure to comply with its orders. (Items 3-5, 7-9)

In about September 2020, Applicant's employer terminated him for entering inaccurate information into its timekeeping system for two of his subordinates. He claimed they had clocked into work on time when they were both five or more minutes late. One of these subordinates was his son. In the SCA, he claimed that he had been fired for changing one of his employee's timecards by three minutes. In the SCA, he did not mention that he changed two employee timecards, and he did not disclose that one of them was his son. During his SI, he lied to the DOD investigator by claiming that he had been terminated because he altered an employee's timecard by adjusting their lunch break to comply with State A's labor laws. (Items 3, 4, 6)

In its SOR, the Government alleged that Applicant had eight delinquent debts totaling approximately \$32,000. These delinquencies consisted of installment sales contracts for the purchase of two jet skis and a computer (SOR ¶¶ 1.a and 1.c, respectively), telecommunications debts (SOR ¶¶ 1.b and 1.g), credit cards (SOR ¶¶ 1.d through 1.f), and a debt to a company that purports to improve credit scores (SOR ¶ 1.h). He admitted these debts in his SOR response. He claimed he fell behind on these accounts when he was unemployed. According to his SCA, he was unemployed after he was terminated for altering timecards until June 2021, and from June 2022 until May 2023, when an employment contract ended. The record is not clear as to which period of unemployment left him unable to pay which debts. The evidence reflects that he has not resolved any of these delinquencies. While it is not alleged in the SOR, he did not list any financial delinquencies on his SCA, and he could not justify this failure during the SI. (Items 3, 4, 5, 10, 11)

Any adverse information not alleged in the SOR will not be used for disqualification purposes, however it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)).

### **Policies**

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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."

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant was charged with inflicting corporal injury on his wife after striking her in the face and shoving her to the ground. There is sufficient evidence of his criminal conduct in the form of police reports, court records, and credible allegations from his victim. There is also sufficient evidence that there is an active warrant for his arrest. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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;

(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.

As it has been about three years since Applicant was arrested for striking his wife, at first blush, it would appear that a significant amount of time has passed since he engaged in criminal behavior. However, I found that he physically assaulted his wife, which he continues to deny. I also found that he lied in the SCA and during the SI. I believe he is being untruthful about material facts relevant to a security clearance adjudication. Falsifying material information in a security clearance adjudication is a criminal offense under 18 U.S.C.A. § 1001. Moreover, there is an active warrant for his arrest. Therefore, Applicant continues to engage in criminal behavior, undercutting his efforts at mitigation under AG ¶ 32(a) and AG ¶ 32(d), which require the passage of time without recurrence of criminal acts. Given the recency of criminal activity, AG ¶ 32(a) and AG ¶ 32(d) do not apply. AG ¶ 32(c) does not apply because there is reliable evidence of criminal conduct in the form of credible allegations and police reports. None of the Guideline J mitigating conditions apply. The criminal conduct security concerns are not mitigated.

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

The security concern for personal conduct 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 guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government official; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations.

In 2020, Applicant falsified timecards while he worked for a former employer and was terminated for it. He deliberately omitted or lied about the circumstances surrounding his termination in the SCA by claiming he only altered one employee's timecard by three minutes when he had altered two employees' timecards by more than that amount. He deliberately omitted information from his SCA about the reason for his 2021 arrest, and that he was intoxicated when he was arrested. He lied to a DOD investigator about the manner in which he falsified timecards and the reason he did so when he claimed he altered one employee's timecard to comply with State A's labor

laws. He lied to a DOD investigator when he claimed he had not struck his wife in 2021 prior to being arrested. AG ¶¶ 16(a) and 16(b) are established.

Applicant's criminal conduct alleged under Guideline J that has been cross-referenced under Guideline E is explicitly covered under Guideline J. AG ¶ 16(d) is not established by that cross-alleged conduct. Therefore, I find for Applicant with respect to SOR ¶ 2.b.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

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

(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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant did not correct his falsification of the circumstances surrounding his termination or his 2021 arrest. Instead, during the SI, he fabricated another explanation for his termination and continued to maintain that he had not assaulted his wife. During the SI, he volunteered that he had been intoxicated when he was arguing with his wife, but he provided this sliver of truth while maintaining his lie that he did not strike his wife. AG ¶ 17(a) has minimal application, and only with respect to the SOR allegation (SOR ¶ 2.e) concerning his failure to disclose his intoxication in the SCA.

Deliberately falsifying required information and lying to DOD investigators is not minor. Instead, these actions strike at the heart of the security clearance process, which relies on candid and honest reporting. Applicant engaged in this deceitful and misleading activity multiple times. Therefore, he has not shown that his behavior was infrequent, happened under unique circumstances, or is unlikely to recur. AG ¶ 17(c) does not apply.

Applicant has not acknowledged his dishonest behavior. Instead, the evidence shows that he has continued to claim that he did not touch his wife during the 2021 incident. There is no evidence that he has told the truth about the reason for his 2020 termination. For the reasons I provided in my analysis of AG ¶ 17(c), I do not find his dishonest behavior is unlikely to recur. AG ¶ 17(d) does not apply.

## 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.

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 had eight delinquent debts totaling about \$32,000. The evidence is sufficient to establish the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, 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.

It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). As there is no evidence to show that the SOR debts were paid, disputed, or otherwise resolved, I do not find that Applicant has acted responsibly under the circumstances. Likewise, I do not find that he has made a good-faith effort to repay



overdue creditors or otherwise resolve debts. He has not provided evidence to show that he has overcome the causes of his financial issues. Applicant's financial issues are ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. The financial considerations security concerns are not mitigated.

### **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 the facts and circumstances surrounding this case. I have considered his honorable military service. I have incorporated my comments under Guidelines J, E, and F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not mitigate the criminal conduct, personal conduct, or financial considerations 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 J:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Subparagraphs 2.c-2.g:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a-3.h:	Against Applicant

**Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge