



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



In the matter of:)
)
) ISCR Case No. 23-01806
)
Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Department Counsel
For Applicant: *Pro Se*

07/10/2024

Decision

BORGSTROM, Eric H., Administrative Judge

Applicant attributed a portion of his delinquent debt to a fraudulent business venture; however, he did not establish how much he paid towards the scam. More importantly, he decided not to take any steps towards resolving his delinquent accounts, did not establish the handling protected information security concerns. Applicant demonstrated questionable judgment in two workplace violations. He did not mitigate the financial considerations and personal conduct security concerns. Eligibility for access to sensitive information is denied.

Statement of the Case

On October 24, 2023, the Department of Defense Consolidated Adjudications Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations), Guideline K (handling protected information), and Guideline E (personal conduct). The CAF acted under Executive Order (EO) 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 implemented by the DOD on June 8, 2017.

In Applicant's December 4, 2023 response to the SOR (Answer), he denied SOR ¶¶ 1.a.-1.g., and 3.b., and he admitted SOR ¶¶ 2.a., 3.a., and 3.c. He provided

explanations for his conduct, and he attached a credit report, correspondence about his child-support obligation, his response to DOHA interrogatories, an email regarding an alleged workplace violation, and a character-reference letter. He requested a decision by a Defense Office of Hearings and Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer)

On January 24, 2024, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Government Exhibits (GE) 1 through 11. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the admissibility of the evidentiary exhibits.

On March 27, 2024, Applicant received the FORM and its attachments. He did not submit a response to the FORM within 30 days of receipt. He did not raise any objections to the admissibility of any of the evidentiary exhibits. The case was assigned to me on June 20, 2024. GE 1 through 11 are admitted in evidence without objection.

Findings of Fact

Applicant is 32 years old. He was married in August 2012 and divorced in August 2018. He has two children, ages 10 and 12, who reside with Applicant's ex-wife. (GE 1)

From January 2011 to July 2018, he served on active duty in the U.S. Air Force, from which he received an honorable discharge. Since September 2018, he has served part time in the Air National Guard, currently as a technical sergeant. There is no evidence of part-time or full-time employment between July 2018 and October 2018. Between October 2018 and at least November 2021, he also worked part time as an Uber driver. From April 2019 to March 2022, Applicant was employed full time as a material coordinator employed with a DOD contractor. From March 2022 until February 29, 2024, he was employed full time as a simulator technician for a different DOD contractor. Since March 2024, he has been employed by a third DOD contractor. (GE 1, GE 4)

On October 15, 2021, Applicant received a written reprimand for knowingly leaving U.S. Government equipment valued at approximately \$16,657 unattended in a warehouse within a secure installation. (SOR ¶ 3.a.). Applicant did not complete the necessary paperwork to transfer custody. (GE 10)

On November 9, 2021, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 26 – Financial Record - Delinquency Involving Enforcement, he reported that he owed approximately \$17,000 in past-due child support and that his child-support obligation became delinquent in July 2018 (SOR ¶ 1.h.). He listed no other delinquent accounts. (GE 1)

On December 14, 2021, Applicant was suspended for three days without pay from his employment with a DOD contractor for misuse of work time (SOR ¶¶ 2.a., 3.c.). Applicant had created and published a TikTok video filmed in his office workspace within a secured facility that required badged access for entry. He was also required to surrender his computer access card and facility-access badge. (GE 8, GE 9, GE 11)

On August 18, 2022, Applicant was interviewed by an authorized investigator from the Office of Personnel Management (OPM). During this security interview, Applicant admitted that in his previous position as a materials coordinator, he had recorded a TikTok video in December 2021 while located in his office within a secure facility with badged access (SOR ¶¶ 2.a., 3.c.). The video was then uploaded to his TikTok account and available for public viewing. In the background of the video was a tall lockable cabinet, and it received over 1,300 views. This video was taken during official work hours and in a controlled access area. He was issued a written reprimand and was suspended three days without pay. His computer access card and facility badge were also revoked. He was also ordered to complete re-training on cyber awareness, security training, and the safeguarding of classified and controlled unclassified information. A security violation investigation was initiated; however, there is no evidence of a security violation or infraction, or the violation of any security procedures. (GE 4, GE 8, GE 9)

During his August 2022 OPM interview, Applicant admitted an October 2021 reprimand while employed at the previous DOD contractor. He did not complete chain-of-custody paperwork as required for approximately \$16,000 worth of U.S. Government equipment (SOR ¶ 3.a.). He knowingly left this equipment unattended in a warehouse in a secure facility. He received a written reprimand for this violation of procedures. (GE 4)

During his August 2022 OPM interview, Applicant admitted that he owed approximately \$14,145 in delinquent child support payments (SOR ¶ 1.h.). His child-support obligation became delinquent in July 2018, and he attributed the delinquency to his divorce and transition from military service. At that time, he had been unable to find gainful employment sufficient to satisfy his child-support obligation. He further explained that he had spent approximately \$54,000 beginning in 2015 for trainings and conferences to become a self-employed online business owner. He claimed he charged these expenses to six of the credit-card accounts alleged in the SOR (SOR ¶¶ 1.a.-1.f.). As of 2016, he believed that he had been scammed. The accounts were charged off in 2016, and he decided to wait for these accounts to fall off his credit report after seven years. Applicant adopted the summary of the August 2022 interview in his September 2023 response to DOHA interrogatories and in his Answer. (Answer; GE 4)

In his February 2023 response to DOHA financial interrogatories, Applicant explained that he entered into a business venture in early 2016. He opened multiple lines of credit, totaling approximately \$50,000, and he claimed that approximately half of his credit-card expenses were attributable to a "business fee for the training" associated with this business venture. He later concluded that the business venture was not legitimate, and he claimed that he consulted "many financial advisors." He decided to not file bankruptcy and "allow the debt to fall off my credit report in 7 years." He further claimed that he received a small payout from a class action lawsuit against the company that marketed the business venture. He attached an April 2022 email from the Federal Trade Commission about a payout of \$2,709 to Applicant from the lawsuit. Applicant has not provided any evidence to corroborate his claims as to the amount spent pursuing this fraudulent business venture. (GE 3)

The SOR alleges eight delinquent accounts totaling approximately \$69,643. The credit reports establish that five credit-card accounts (SOR ¶¶ 1.a., 1.c.-1.f.) were opened

in October 2015 and one (SOR ¶ 1.b.) was opened in December 2013. During his OPM interview and in his February 2023 interrogatories, Applicant admitted that he incurred these debts, half of which went towards his business training and conferences, and that these debts became delinquent in 2016. He also admitted that these debts remained unpaid and that he had no intent to pay these accounts. **SOR ¶¶ 1.a.-1.f. are not resolved.** (Answer; GE 3, GE 5, GE 7)

SOR ¶ 1.g. This account was opened in December 2019 and was placed for collection in about April 2021 in the approximate amount of \$532. There is no evidence of any payments or payment arrangements on this account, and Applicant has expressed his intent not to pay this debt. **This debt is not resolved.** (Answer; GE 3, GE 5)

SOR ¶ 1.h. During his OPM interview, Applicant admitted that his child-support obligation was delinquent in approximate amount of \$14,145. In his February 2023 response to DOHA financial interrogatories, Applicant attached a January 2023 paystub showing \$588 being withheld from his bi-weekly paycheck for his child-support obligation. On November 15, 2023, Applicant made a lump-sum payment of \$9,955 to resolve this arrearage, as confirmed by documentation from the child-support enforcement agency (CSEA). **This debt is resolved.** (Answer; GE 3)

In his Answer, Applicant included an email from another DOD contractor employee stating that she recalled that Applicant had conferred several inventory accounts to the alternate custodian in anticipation of his March 2022 departure for his then employer. This information relates to the allegation in SOR ¶ 3.b. (Answer)

In his Answer, Applicant submitted a character-reference letter from the program manager who supervised Applicant at the DOD contractor for whom Applicant was employed from September 2019 to March 2022. The supervisor praised Applicant's work performance, timeliness, and dedication, and he corroborated Applicant's statements that a primary custodian was not appointed to take over Applicant's inventory accounts as required in March 2022 (SOR ¶ 3.b.). There is no evidence that this reference was aware of the other two workplace violations (SOR ¶¶ 3.a. and 3.c.) (Answer)

Policies

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(a), 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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

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;

- (b) an unwillingness to satisfy debts regardless of ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's eight accounts, totaling over \$69,000, became delinquent between 2006 and April 2021. Applicant resolved one account (SOR ¶ 1.h.), but he does not intend to initiate any steps to resolve the remaining accounts. AG ¶¶ 19(a), 19(b), and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his debt-resolution efforts or required to be debt-free. "Rather, all that is required is than an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant has not disputed any of the accounts. Rather, he attributed half of his delinquent credit-card balances (SOR ¶¶ 1.a.-1.f.) to a fraudulent business venture. He has not provided any evidence to corroborate the amount he paid towards that business venture. More importantly, he has no intent to take any steps to resolve these delinquent accounts and has decided to let them "fall off" his credit report. Even if Applicant established circumstances beyond his control contributed to his financial delinquencies, he has not established that he has acted responsibly to address and resolve his delinquent financial obligations. Furthermore, he attributed only half, and not all, of these credit-card balances to the fraud. Applicant has no intent to resolve his delinquent accounts. He has not established any payment plans or made any payments. There is no

evidence that he has participated in credit counseling. None of the financial considerations mitigating conditions apply as to SOR ¶¶ 1.a.-1.g.

In November 2023, Applicant made a lump-sum payment to resolve his child-support arrearage. He had also made monthly payments while gainfully employed, as established by his paystub. AG ¶ 20(d) applies as to SOR ¶ 1.h.

Applicant's decision to let his delinquent accounts "fall off" his credit report reflects questionable judgment and not responsibility for one's financial obligations. He did not mitigate the financial considerations security concerns.

Guideline K: Handling Protected Information

The security concern for financial considerations is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for handling protected information - which includes classified and other sensitive government information, and proprietary information – raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

The guideline notes several conditions that could raise security concerns under AG ¶ 34. The following are potentially applicable in this case:

- (a) deliberate or negligent disclosure of protected information to unauthorized persons, including, but not limited to, personal or business contacts, the media, or persons present at seminars, meetings or conferences;
- (g) any failure to comply with rules for the protection of classified or sensitive information;
- (h) negligence or lax security practices that persist despite counseling by management; and
- (i) failure to comply with rules or regulations that results in damage to the national security, regardless of whether it was deliberate or negligent.

Although Applicant admitted that he filmed and published a TikTok video showing the interior of his office within a security facility requiring badged access, the Government did not establish that he violated any rules or regulations for the protection of classified or sensitive information. Applicant was reprimanded for the misuse of work time. This incident is addressed below within the Guideline E analysis. The Government did not establish any disqualifying conduct under Guideline K.

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

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following disqualifying condition is potentially applicable in this case:

(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:

(3) a pattern of dishonesty or rule violations.

Applicant admitted two workplace violations that resulted in written reprimands. In October 2021, he knowingly left Government equipment unattended in a warehouse without completing the requisite paperwork. In December 2021, he was reprimanded for the misuse of work time after creating and publishing a TikTok video showing the interior of his office space. He was suspended for three days without pay and required to complete refresher security training. His computer access card and facility-access badge were also confiscated. AG ¶ 16(d)(3) applies.

SOR ¶ 3.b. alleges that Applicant failed to properly transfer or close out custody of approximately 60 pieces of Government equipment at the time of his March 2022 departure from the DOD contractor. The Government did not present any evidence to establish any violation by Applicant. Rather, Applicant presented evidence from his former supervisor and former co-worker who corroborated Applicant's claim that he transferred the inventory accounts to the alternate custodian and that the employer had failed to appoint a replacement custodian prior to his Applicant's departure. Of note, the Government did not address the personal conduct security concerns in its FORM. The Government did not establish disqualifying conduct as to SOR ¶ 3.b.

The following personal conduct mitigating conditions under AG ¶ 17 are potentially relevant:

(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 admitted the two written reprimands for workplace violations. In both instances, Applicant exhibited questionable judgment - by leaving Government equipment unattended and by creating and publishing TikTok content in his secured work environment. The character-reference letter from his former supervisor praised his work performance but did not address or acknowledge the two written reprimands. There is no other evidence as to Applicant's work performance or military service showing increased maturity, good judgment, or rehabilitation. Applicant acknowledged his mistakes; however, he has not presented sufficient evidence of successful rehabilitation or that such lapses in judgment are unlikely to recur. He did not mitigate the personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 incorporated my comments under Guideline F, Guideline K, Guideline E, and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant served in the U.S. Air Force for seven years and earned an honorable discharge. While in the military, he incurred approximately \$69,000 in delinquent credit-card accounts, of which half he attributed to a scam. He has no intent to make payments or payment arrangements to resolve these delinquent accounts. At a previous employer, he was twice reprimanded for workplace violations, and he has not presented evidence of successful rehabilitation or that these lapses in judgment are unlikely to recur. The Government did not establish the handling protected information security concern. Eligibility for access to classified information is denied.

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.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant
Paragraph 2, Guideline K:	FOR APPLICANT
Subparagraph 2.a.:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a.:	Against Applicant
Subparagraph 3.b.:	For Applicant
Subparagraph 3.c.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge