



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



In the matter of:)
)
) ISCR Case No. 23-01266
)
Applicant for Security Clearance)

Appearances

For Government: Lauren Ann Shure, Esq., Department Counsel
For Applicant: *Pro se*

02/13/2025

Decision

Curry, Marc E., Administrative Judge:

Although circumstances beyond Applicant's control led to his financial problems, he has provided no persuasive evidence of steps that he has taken to remedy them. When considered together with his falsification of questions on his 2021 security clearance application, I conclude that he has failed to mitigate the security concerns. Clearance is denied.

Statement of the Case

On July 12, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On September 3, 2023, Applicant answered the SOR, denying all the allegations except subparagraphs 1.c and 1.d, and requesting a hearing. On September 30, 2023, Department Counsel amended the SOR, revising subparagraphs 1.a, 1.b, 2.a, and 2.b; and adding subparagraphs 1.e through 1.i, and subparagraphs 2.b through 2.f. On October 16, 2023, Applicant answered the amended SOR on October 23, 2023, admitting all the revised or additional allegations except amended subparagraph 1.a. I have incorporated the amended SOR and the answer to the amended SOR into the record as Hearing Exhibit (HE) I and HE II.

On June 14, 2024, the Defense Office of Hearings and Appeals issued a notice of hearing for July 25, 2024. The hearing was held as scheduled. At the hearing, I received eight Government exhibits (GE 1 – GE 8), a copy of the discovery letter mailed from Department Counsel to Applicant (HE III), in addition to Applicant's testimony. The transcript (Tr.) was received on August 20, 2024.

Findings of Fact

Applicant is the 41-year-old father of an 11-year-old child and a ten-month-old child. He lives with his fiancée. He graduated from college in 2006 and he earned a master's degree in the field of project management in 2010. (GE 1 at 10) He has been working for a government contractor as a management analyst since January 2016. (GE 1 at 10)

The amended SOR alleges that Applicant failed to file his federal income tax returns for tax years 2020 and 2021, and owes approximately \$20,947 in delinquent federal income taxes. (HE I, subparagraphs 1.a and 1.b.) The SOR and the amended SOR also allege that Applicant has four outstanding state tax liens, entered against him between 2016 and 2019, totaling \$7,590 (HE I, subparagraphs 1.f – 1.i), and three commercial delinquencies, totaling approximately \$51,538, (SOR subparagraphs 1.c -1.e).

Applicant admits incurring these debts, and attributes his financial problems to several circumstances beyond his control, including the death of his infant son in 2022 and the corresponding funeral costs (Tr. 14, 29); the expenses he had to assume for the care of his mother, who was rendered mentally incapacitated and unable to care for herself by multiple strokes and aneurysms between 2012 and 2017 (Tr. 10, 27; GE 2 at 7); and the expenses related to the death of Applicant's brother in 2012. (Tr. 20) Some of the tax delinquencies date back to 2012. (Tr. 41)

Since the issuance of the amended SOR in September 2023, Applicant has filed his federal income tax returns for tax years 2020 and 2021 but has not filed his returns for tax years 2022 and 2023. (Tr. 20) Applicant contacted the IRS and the state revenue taxing authority and entered into payment plans. (Tr. 23) However, both the IRS and state taxing authority later suspended the payment plans, concluding that he had to file the outstanding tax returns before he could continue with the payment plans. (Tr. 20-23) Applicant did not provide any evidence supporting his contention that he was preparing to file his late tax returns. Both Applicant's federal and state income tax delinquencies remain outstanding.

The debt alleged in SOR subparagraph 1.a, totaling \$14,166, is the deficiency remaining from a car that was totaled in an accident in 2021. (GE 7 at 8). Although Applicant had GAP insurance, his claim was rejected because he was not current on the car payments when the accident occurred. (Tr. 47) Other than a \$50 payment in August 2023, Applicant has made no other payments on this debt. (Tr. 42; GE 2 at 14)

The debt alleged in SOR subparagraph 1.d, totaling \$2,321, is a collection agent for a delinquent credit card. (Tr. 22) Applicant thought this debt had been removed from his credit report. It remains outstanding. (Tr. 22)

Subparagraph 1.e, as alleged in the amended SOR, totaling \$17,538, is a delinquent car debt. It has been delinquent since July 2023. (GE 7 at 5) Applicant contacted the creditor and was given a choice to either pay the entire delinquency in one payment, or to split it into four payments. He could not afford either option. He contends that he has made some payments but provided no supporting documentation. (Tr. 43)

Applicant earns approximately \$100,000 annually on his full-time job, and he earns an extra \$11,000 annually with a part-time, high-school coaching position. (Tr. 70) Applicant and his fiancée have a combined income of \$200,000. He maintains a budget and has approximately \$300 of monthly, discretionary income. (GE 2 at 12)

Applicant completed a security clearance application in 2021. He did not disclose any of his delinquent debts, as required in response to Section 26 of the application. He testified that he did not disclose them because he was paying the debts through payment plans when he completed the application. (Tr. 45-46)

In 2009, Applicant was charged with driving under the influence (DUI), driving while intoxicated (DWI), and operating while impaired. He pleaded guilty to the operating while impaired charge and was sentenced to probation. (Answer to Amended SOR at 2)

In 2018, Applicant was arrested and charged with DWI. Subsequently, he pleaded guilty and was sentenced to probation. (Answer to amended SOR at 2)

Applicant did not disclose either alcohol-related arrest on his 2021 security clearance application. He testified that he did not include the 2009 charge on the 2021 security clearance application because it had been expunged. (Tr. 62) He disclosed this arrest on a security clearance application completed in 2011. (Tr. 52-53)

Applicant did not include the 2018 charge on the 2021 application because he thought the charges had been dropped. He attributes this mistake to not being “fully focused” on the paperwork because he was dealing with his son and his mother when he was completing the application. (Tr. 64)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall 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 deciding.

The protection of the national security is the paramount consideration. AG ¶ 1(d) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Applicant’s failure to file his 2020 and 2021 federal income tax returns, and his outstanding federal and state income tax delinquencies trigger the application of AG ¶ 19(f), “failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax, as required.”

Since the issuance of the amended SOR in September 2023, Applicant filed his 2020 and 2021 federal income tax returns. Therefore, I resolve amended SOR subparagraph 1.a in his favor. Conversely, he has yet to file this tax returns for 2022 and 2023. Under these circumstances, his filing of the 2020 and 2021 federal income tax returns has minimal probative value.

As for the remaining SOR allegations, 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, 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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements

Although Applicant's financial problems were caused by circumstances beyond his control, he provided minimal evidence of any steps that he has taken to pay these debts. In addition, he did not provide any evidence that he has attended any financial counseling classes or made arrangements with the federal or state taxing authorities. Consequently, the first prong of AG ¶ 20(b) governing circumstances beyond one's control is applicable, but none of the remaining mitigating conditions are applicable. I conclude Applicant failed to mitigate the financial considerations security concern.

Guideline E: Personal Conduct

Under this guideline, "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." (AG ¶ 15) Moreover, "of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." (*Id.*) Applicant's failure to disclose his delinquent debts and his alcohol-related criminal charges raise the issue of whether 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," applies.

Applicant contends that he thought he did not have to disclose his delinquencies on the security clearance application because he was on payment plans when he completed the application. This explanation is not credible because the security clearance application required him to disclose his delinquencies regardless of whether he was in the process of satisfying them. Moreover, Applicant provided scant evidence supporting his contention that he had ever been complying with any payment plans. Under these circumstances, I conclude AG ¶ 16(a) applies to Applicant's omission of his delinquent finances from his security clearance application without mitigation.

Applicant had disclosed the 2009 alcohol-related arrest on a security clearance application completed in 2011. Under these circumstances, his explanation that he did not include it on his 2021 application because it had been expunged is credible. I resolve subparagraph 2.c in his favor. Conversely, in light of the fact that Applicant pleaded guilty to the 2018 alcohol-related charge, his explanation that he did not include it on the 2021 security clearance application because he thought it had been dropped is not credible. AG ¶ 16(a) applies to subparagraphs 2.d through 2.f without mitigation. In sum, Applicant failed to mitigate the personal conduct security concerns,

Whole-Person Concept

Applicant's financial problems were caused by a series of personal tragedies. Applicants, however, cannot prevail by only setting forth the circumstances beyond their control which contributed to their financial problems. Instead, they must show proof that they acted responsibly to address the debts and remedy their troubled financial situations.

Here, Applicant did not provide sufficient evidence of what steps he has taken to ameliorate his troubled financial situation. Under these circumstances, I conclude Applicant has not mitigated the security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant
Subparagraphs 2.d – 2.f:	Against Applicant

Conclusion

Considering the circumstances presented by the record in this case, 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.

Marc E. Curry
Administrative Judge