



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



In the matter of:)
)
) ISCR Case No. 24-01457
)
Applicant for Security Clearance)

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

04/04/2025

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns raised under Guideline F (financial considerations). He mitigated security concerns raised under Guideline J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 23, 2023. On September 24, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F and J. The DOD acted 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 3, 2024, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on December 13, 2024, including documents marked as Government Exhibits (GE) 1 through GE 9. On December 13, 2024, a complete copy of

the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on January 7, 2025, and did not submit a response. The case was assigned to me on March 17, 2025.

On April 3, 2025, Applicant submitted two documents in mitigation via the Department Counsel, who did not object to their admission. I labeled the documents as Applicant Exhibits (AE) 1 and AE 2 and admitted them in evidence. GE 1 and GE 2 are already part of the administrative record and need not be admitted. GE 3 through GE 9 are admitted in evidence without objection.

Findings of Fact

In his Answer, Applicant admitted all allegations in the SOR (SOR ¶¶ 1.a, 1.b. and 2.a). His admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 30 years old. He earned his high school diploma in June 2013 and enlisted in the active duty Army immediately after graduation. In April 2023, he was medically discharged from the Army after almost 10 years of honorable service. Though he received high-level technical training in the Army, he has not yet attended a college or university program. He married in 2016 and divorced in 2020. He has resided with his current cohabitant since 2023. He has a five-year-old daughter, a dual national of the United States and Italy, who currently resides in Italy with her mother. He provides monthly support of about \$500 and communicates with her weekly. (GE 5, 8, 9)

Applicant has worked as an information technology specialist for a defense contractor since October 2023. He disclosed he was first granted a secret security clearance while in the Army. He completed his most recent SCA in October 2023. (SOR Answer; GE 5)

Under Guideline F, the SOR alleges two delinquent debts totaling over \$35,000, which Applicant admitted. His admissions are supported by evidence in two credit bureau reports (CBRs), and comments made in his 2022 and 2023 DOD background interviews. Applicant denied having any delinquent debts in his response to questions in his October 2023 SCA.

The evidence related to debts alleged in the SOR is summarized below:

SOR ¶ 1.a (\$33,361): Applicant admitted this debt, an individual car loan opened in August 2018. It was past due in August 2022, and charged off in 2024. He said the Italian police impounded his car after his 2021 driving under the influence (DUI) incident, and claimed he was unable to remove it due to his military transfer orders. He told the creditor he lost the car and submitted a statement to them. He said he tried to log-in to pay the account, but that it would not allow a payment because the account reflected a zero balance. When he realized the debt was still outstanding, he did not contact the

creditor, pay the debt, or take any action to resolve it. In his answer, he said he was “financially unable to settle the debt” three years ago, but that he has started to settle delinquent debts one-by-one. No documentary evidence about this debt was provided to support this statement. (SOR Answer; GE 4, 6-9)

In his June 2024 response to interrogatories, Applicant admitted he had not paid this debt. It was listed as a charged-off account in the amount \$32,961, an amount less than the current account balance. (GE 4) He also made the following comments regarding his planned course of action for the debt:

A vehicle with that bank was impounded in Italy and ultimately crushed. I contacted the bank about the situation and was told it was “fine” and that the bank would write off the loan and classify it as a [repossession].

Applicant said the creditor no longer owned the account, and he planned to contact an Italian lawyer to look into and negotiate the matter. (GE 4) In a February 2024 background interview, he told the investigator he would wait for the debt to be removed from his account if he could, but that he would pay the debt if he had to. (GE 9 at 13) This debt is unresolved.

SOR ¶ 1.b (\$2,053): Applicant admitted this debt on an account that was last paid in November 2018, and charged off in about 2019. Applicant said he incurred this debt 10-years ago, the creditor merged with another company, and changed the account number. He claimed he was unsuccessful locating the account to pay the debt, but he fully intends to pay it. No documentary evidence regarding this debt was submitted to support this statement. In his 2022 background interview, he said he would research the account and find out what to do with it. The account also reflected the same balance but was in collection at that time. In his 2023 background interview, he was again confronted with the same account, and claimed he was unsure of the account or its status. (SOR Answer; GE 4, 6-9) This debt is unresolved.

Though not alleged in the SOR, Applicant’s September 2024 CBR shows a delinquent debt of \$4,829 on an account opened in July 2022, currently in a collection status.

Applicant said he earned \$35,000 per year in the Army, but his employment salary and Department of Veterans Affairs (VA) benefits now total about \$105,636 per year. (SOR Answer) His personal financial statement shows he earns about \$6,421 monthly, less \$5,444 in expenses and \$750 in payments, leaving a net monthly remainder of about \$227. His pay ledger shows he has a 401k retirement plan valued at \$1,643. He borrowed against his 401k and pays \$10 per pay period on the balance. (GE 4) In his December 2023 background interview, he described his financial situation as comfortable, and said he can meet all his needs, has a steady income, all or most debts have been paid, and he does not have to worry about his finances. (GE 9)

Under Guideline J, the SOR alleges in SOR ¶ 2.a, that in October 2021, in Italy, Applicant was charged with DUI after registering BAC levels of .105 and .108; and driving without valid vehicle insurance. It also alleges he failed to provide the DUI citation to his command, as required; and that he received nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ), for violation of UCMJ Articles 131b (Obstruction of Justice), 107 (False Official Statement), 92 (Failure to Obey General Order), 113 (DUI), and 134 (Driving Without Valid Vehicle Insurance). The SOR alleges Applicant was punished as follows:

[R]eduction in rate to E-4, suspended, to be automatically remitted if not vacated on or before 15 May 2022; forfeiture of \$500 pay; and, 45 days extra duties and restriction to the limits of the company area.

Applicant admitted he was charged with DUI and driving without valid vehicle insurance. However, he denied he failed to provide his DUI citation to his command. He admitted being charged under the above UCMJ Articles, but denied he was punished for any of them, except Article 113 (DUI). He said his chain of command determined all the other charges were “unfounded” based on the evidence. (SOR Answer) He provided a copy of his Article 15, UCMJ record, and his Italian vehicle insurance card to support his statements. (AE A,B) All charges, except the DUI charge, were dismissed by the Article 15 Officer. Applicant’s punishment for the incident is consistent with the above, except the area of restriction for 45 days permitted access to dining/medical facility, and place of worship. (AE A)

Applicant took full responsibility for his decision to drive at about 1:00 AM after having two or three glasses of wine that evening. He said one of his junior soldiers called him in distress, stating he was intoxicated, needed help, did not know where his wallet was located, and did not have anyone else to call for help. Applicant said his immediate reaction was to help his soldier. He felt fine to drive, and did not believe he was intoxicated. He claimed that, before that moment, he had never driven after having even one alcohol beverage. (SOR Answer; GE 5, 8, 9)

After the incident in 2021, Applicant voluntarily completed substance abuse counseling (though deemed unnecessary by the counselor) and mental health counseling. He completely ceased alcohol consumption until he was discharged from the Army. Now, he said he no longer consumes alcohol while away from home and he refuses to drive if he has consumed any alcohol beverage. (SOR Answer)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants

eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531. See also AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. 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.

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

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

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Applicant's admissions, two CBRs, and statements made during his background interviews establish the above disqualifying conditions under this guideline.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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

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

None of the above mitigating conditions are established. Applicant's delinquent debts are recent, ongoing, and unresolved. His vehicle, in which he still owed a large balance, was impounded as a result of his DUI. He did not provide information about the steps he took to retrieve his vehicle from the police, nor did he present evidence describing his communications with the creditor. It appears he largely abandoned the debt when he left Italy, with minimal to no communication with the creditor. He has not taken meaningful steps to resolve the debt alleged in SOR ¶ 1.a. A similar situation occurred with respect to the debt in SOR ¶ 1.b. He knew this debt was unresolved as far back as August 2022, and he took little to no action to address it. I find that his actions were neither reasonable nor responsible for these debts.

There is insufficient evidence to establish that the conditions creating Applicant's financial situation were beyond his control; that he acted responsibly under the circumstances; or that he made a good-faith effort to pay his delinquent debts. Though he indicated he planned to contact creditors and repay his debts, he did not provide documentary evidence showing steps he has taken to address them. Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and judgment. He has not met his mitigation burden.

Guideline J, Criminal Conduct

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

Criminal activity creates doubt about an Appellant'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.

Applicant's admission and the evidence in this FORM establish the following disqualifying condition under AG ¶ 31.

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

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

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and 32(d) are established. Applicant's DUI incident happened over three years ago, under unusual circumstances that are unlikely to recur, and does not cast doubt on his current reliability, trustworthiness, or judgment. Applicant was home in October 2021 when he received a call for help in a foreign country from a junior soldier under his charge. His reaction in attempting to help his subordinate was understandable under the circumstances. He accepted his punishment and completed all requirements imposed by the Article 15 Officer. Though not required, he attended substance abuse and mental health counseling to show his dedication to never allowing the incident to happen again. He also stopped drinking alcohol beverages until he left the Army, and now he does not consume alcohol outside of home and has vowed to never drive after consuming alcohol again. The criminal conduct security concerns are 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 have incorporated my comments under Guidelines F and J in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. I conclude Applicant failed to provide sufficient evidence to mitigate security concerns based on financial considerations. The concerns raised under criminal conduct were mitigated.

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.b:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For 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.

Gatha LaFaye
Administrative Judge