



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-01716

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

04/03/2025

Decision

BENSON, Pamela C., Administrative Judge:

Although Applicant successfully mitigated the financial considerations security concerns, he did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 12, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

On January 19, 2024, Applicant provided a response to the SOR (Answer) and requested a decision based on the administrative record. On May 14, 2024, Applicant retained legal counsel and changed his request to a hearing before a Defense Office of Hearings and Appeals (DOHA) judge. On September 12, 2024, the case was assigned to me. On October 1, 2024, DOHA issued a notice of hearing, setting the hearing for November 19, 2024. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 16 Government exhibits (GE) 1 through 16; Applicant offered 24 exhibits labeled as Applicant exhibits (AE) A through X; there were no objections, and all proffered exhibits were admitted into evidence. I held the record open for one month in the event either party wanted to supplement the record with additional documentation. Applicant timely provided 10 documents (Applicant exhibits (AE) Y through HH), which were admitted without objection. On December 3, 2024, I received the hearing transcript (Tr.), and the record closed on December 19, 2024.

Findings of Fact

In Applicant's January 2024 Answer, he denied all ten debts alleged under Guideline F in the SOR (§§ 1.a through 1.j) He denied one allegation under Guideline E, SOR § 2.a, and he admitted the remaining four allegations, however, during the hearing his counsel requested the dates alleged under Guideline E be amended date to reflect 2020, the correct year, instead of 2021, as alleged in the SOR. The SOR was amended to conform with Applicant's testimony by correcting the date and stipulated by both parties. (SOR §§ 2.a through 2.e) (Tr. 7-9, 25, 41-42)

Applicant is 28 years old. He is married and has a three-year-old son. He attended some college classes, but he did not earn a college degree. He enlisted into the U.S. Air Force (USAF) in March 2015, and in November 2020 he received a general under honorable conditions discharge from the military. He earned Cisco network associate certification in August 2021. He currently works for two different employers. He earns an annual salary, including bonus, of approximately \$176,000 from a federal contractor. He earns \$55 an hour from his second employer, and provided documentation that as of October 2024, he had earned about \$32,560 for the year. His wife did work as a pharmacy technician from at least 2020 to about three months before giving birth to their son in 2021. Since that time, she does not work outside the home. (Tr. 16-19, 23; GE 1; AE N, CC, DD)

Financial Considerations

Applicant stated in his Answer that he was discharged from the USAF in November 2020, during the height of the COVID-19 pandemic. He had previously received at least two rank reductions with reductions in pay while serving in the military, which also impaired his ability to pay his financial obligations. He was discharged from the military because he suffered with mental health issues and not having a support system. Following his discharge, it was difficult for him to find another job, which caused him to fall seriously behind with his creditors. In about March 2021, Applicant was employed by one of his current employers as an associate consulting engineer. In April 2021, he was hired by a second employer. In 2022, he sought guidance from financial advisors and enrolled in financial management courses to improve his financial decisions. He has been responsibly addressing his delinquent debt. Applicant began to pay on his delinquent SOR debts beginning in January 2023, a year before the SOR was issued. (Tr. 18-19, 37, 41; GE 1)

The SOR alleges ten delinquent debts totaling approximately \$47,756. The record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a delinquent account with a bank charged off in the amount of \$25,446. Applicant testified that he had this account on a payment plan. He provided documentation that he had made a \$200 payment in October 2024, and a \$2,247 payment in November 2024. Biweekly payments of \$200 are automatically taken from his bank account. Applicant intends to continue monthly payments until this account is paid. As of November 2024, the outstanding balance was \$19,600. This account is in the process of being resolved. (GE 12, 13, 14, 16; Tr. 19-21, 38-40; AE A, BB)

SOR ¶ 1.b alleges a delinquent bank credit card account charged off in the amount of \$7,933. Applicant testified that he had settled this account, but he did not provide documentation that this account was settled. He did, however, provide documentation of a May 2024 payment plan showing payment arrangements of \$168 per month through March 2028. Applicant did provide supporting documentation post-hearing that this account was settled in October 2024. (GE 12, 13, 14; AE E, EE, FF; Tr. 21-22)

SOR ¶ 1.c alleges a federal government financial account that was placed for collection in the amount of \$3,218. Applicant testified that this money was for his USAF re-enlistment bonus that was rescinded after his November 2020 separation from the military. He provided supporting documentation that this account was paid after the Internal Revenue Service (IRS) intercepted his 2023 tax refund to satisfy this debt. (GE 12, 13, 14; Tr. 22; AE F)

SOR ¶¶ 1.d, 1.e, 1.f, and 1.h allege four delinquent credit union loan accounts that have been referred for collection in the amount of \$3,149, \$3,054, \$2,207, and \$849, respectively. Applicant stated that he had paid all of these credit union loans and provided documentation to show that these debts were resolved in October 2024. (GE 12, 13, 14; AE D; Tr. 22-24)

SOR ¶ 1.g alleges a delinquent credit card account referred for collection in the amount of \$1,315. Applicant testified that he had paid this delinquent account and provided documentation to show that this debt was resolved in October 2024. (Tr. 22-23; AE D; GE 12, 13, 14)

SOR ¶ 1.i alleges a delinquent athletic club membership account referred for collection in the amount of \$421. Applicant testified that he had paid this delinquent account and provided documentation to show that this debt was resolved in November 2024. (GE 12, 13, 14; Tr. 24; AE B)

SOR ¶ 1.j alleges a delinquent athletic club membership account referred for collection in the amount of \$164. Applicant testified that he had paid this delinquent account and provided documentation to show that this debt was resolved in January 2024. (GE 12, 13, 14; Tr. 24; AE C)

Applicant did not list any delinquent accounts on the security clearance application he completed in September 2022. During an April 7, 2023 background interview with an authorized DOD investigator, he was asked if all the financial questions on the SCA were correct. Applicant admitted he had a federal credit union account referred for collection in the amount of about \$10,000 (SOR ¶ 1.a - \$25,446). He stated that he had been paying \$100 a month on the delinquent account. He denied any other delinquent debts. The investigator then confronted Applicant with nine other delinquent accounts totaling \$22,591. He told the investigator that he either did not know the account was delinquent or he did not have a good explanation why he did not list some of these delinquent accounts in his SCA, as required. This information was not alleged in the SOR. (GE 1, 2)

Personal Conduct

SOR ¶ 2.e alleges Applicant was found in violation of Articles 92 and 107 of the UCMJ in about September 2020, after he caused a single car accident and then left the scene of the accident. Applicant testified that on July 3, 2020, he was driving his car too fast and hit a concrete barrier. He had two passengers with him at the time, his roommate and another individual. His friends immediately exited the car and took off running. Applicant believed he was concussed from the accident and was not thinking clearly, so he ran away from the accident scene too. After a while, he returned to the accident scene and completed field sobriety tests for the police. He was then free to leave. (GE 3; Tr. 31-32, 43-46)

During cross examination, Department Counsel referred to the police report and queried Applicant about a woman who had informed police that a man [Applicant] had entered her backyard at two o'clock in the morning, and he had admitted that he was hiding from the police. Police officers set up a containment by surrounding the area, and Applicant was apprehended. Applicant was confronted about the contradiction from his testimony, and he stated that he actually was in the process of returning to the scene of the accident when he was detained by police. The police report showed that he was placed in custody and transported to a hospital. Applicant was charged with failure to stop at a red light, careless driving, failure to notify police of the accident, and failure to remain at the scene of the accident. Applicant did not report his car accident or the charges that were filed against him to his military command. His command discovered this information and Applicant received nonjudicial punishment, as listed above. Applicant stated that since the incident was off base, he was unaware of the requirement to report this information to his superiors. (GE 3-6, 9; Tr. 43-46)

The police report also reflected Applicant's admission that he had been out with his friends at a bar. While he was driving home, they all noticed a police car was following them, and Applicant drove away quickly and made several turns to evade the police car when the accident occurred. This information contained in the police report contradicts with information provided by Applicant during the hearing. (GE 3, 4; Tr. 31-32, 43-46)

SOR ¶ 2.d alleges Applicant was issued a Letter of Reprimand for habitual tardiness. The report showed he had been late to work four times the week of September 21-25, 2020, ranging between five minutes to over four hours. Applicant explained that

he had fractured his ankle in December 2019, but his injury was misdiagnosed as a sprained ankle. He was given a crutch, a boot, and Tylenol for the pain. He was required to walk a quarter of a mile to report to duty, but he also admitted he was habitually tardy for a period of months during 2020. He believed his tardiness was related, in part, to taking an antidepressant, Wellbutrin, that had been prescribed for him for the past three years, and also from not thinking clearly due to lingering pain from his misdiagnosed ankle injury. (Tr. 29-31, 48; GE 8, 9)

SOR ¶ 2.c alleges Applicant was issued a Letter of Reprimand for making a false statement in 2020. At NJP Applicant was reduced in rank and required to forfeit pay. Applicant stated he was charged with falsifying his travel form in August 2020 when he listed that he was going to travel within the local restricted boundaries, when in truth, he traveled out-of-state to go home. (Tr. 27-29)

Due to the pandemic, military members were not permitted to travel outside a restricted area without prior authorization. Applicant had submitted leave for local travel, however, he later changed his mind and traveled home. He did not update his travel paperwork to reflect that he was not traveling locally, and he did not notify his command for prior authorization of his last-minute change of plans to leave the state. He decided he needed to go home for mental health support. He also testified that his ankle injury was another reason he was not thinking clearly. (Tr. 29, 46-48)

Applicant at NJP was found to have knowingly and intentionally disobeyed an order restricting travel and left his duty station without permission. (SOR ¶ 2.b) (Tr. 27-29; GE 7)

Department Counsel confronted Applicant as to whether he intentionally listed a wrong location on the leave form, rather than his claim it was an inadvertent mistake by failing to update the leave form and failing to request prior authorization after he made a last-minute change of travel plans. Applicant maintained that he made the decision to fly home the day after his local travel was approved. He admitted that he was derelict in the performance of his duties because he was aware of the restriction from traveling beyond an authorized leave area without receiving prior authorization. His out-of-state travel was discovered after a friend saw his location on social media and reported this information to his command. (Tr. 29, 46-48; GE 2)

In October 2020, a USAF Lieutenant Colonel and commander of the military base suspended Applicant's security clearance eligibility due to his continued disregard for meeting set military standards. (GE 10; Tr. 52-53)

SOR ¶ 2.a alleges Applicant was discharged from the USAF in November 2020 under general conditions. Applicant agreed that this information was accurate. The second half of the allegation was not accurate, however, and was stipulated as such by Department Counsel during the hearing. It read, "[Applicant] accepted this discharge in order to avoid a potential dishonorable discharge." I will not consider the second half of this allegation in my decision. (Tr. 24-27; AE M)

Any adverse information not alleged in the SOR will not be considered for disqualification purposes but may be considered in evaluating application of mitigating conditions and in applying the whole-person concept. See, e.g., ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

Character Evidence

Applicant graduated at the top of his class at Airman Leadership School, earning both academic achievement and distinguished graduate honors. He provided copies of several awards and various certifications he has completed over the years for his employment duties. He also provided three character reference letters from workplace colleagues and managers. All three individuals find Applicant to be professional, intelligent, and dedicated to whatever task he is currently assigned. Applicant is considered an asset by his employer. (AE N, O)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or

patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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*, 484 U.S. 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive

presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(b) unwillingness to satisfy debts regardless of the ability to do so;" and "(c) a history of not meeting financial obligations."

The SOR alleges ten delinquent debts approximately \$47,756. The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Four financial considerations mitigating conditions under AG ¶ 20 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 initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

It is undisputed that Applicant's indebtedness was caused by his November 2020 general discharge from the military and a delay in finding employment during the pandemic. The underlying issues which led to his military discharge and his inability to find employment during the pandemic are circumstances that were mostly beyond his control. A review of the January 2023 credit report, as compared to the June 2023, April 2024, and November 2024 credit reports, show that he initiated a good-faith effort to repay these creditors, albeit a little more aggressively after he received the January 2024 SOR. He has received financial counseling, and he provided sufficient documentation to show that he initiated and continues making efforts to resolve his delinquent debts. His long-term responsible actions of addressing his financial obligations no longer cast doubt on his current reliability, trustworthiness, and good judgment. Guideline F security concerns have been mitigated.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 has three disqualifying conditions that are relevant in this case to Applicant's behavior resulting in reprimands, punishment and ultimately, his general discharge from the USAF. AG ¶¶ 16(b), 16(d)(3), and 16(e)(1) read:

(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 official government representative;

(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 person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing

AG ¶ 17 lists some conditions that could mitigate security concerns including:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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.

I find the record contains inconsistent statements and contrary record evidence to question Applicant's credibility. His version of events concerning the incident of leaving the scene of an accident, and obtaining approval for local restricted travel, and then changing his travel plans to go out-of-state last minute, lacked credibility and undermined his judgment and reliability. Although these incidents occurred years ago, his efforts to minimize and cover up past mistakes during the security clearance process changes the recency analysis and brings the record of unreliable or untrustworthy behavior up to the current time. Although not alleged in the SOR, Applicant also failed to list any of his ten delinquent debts totaling over \$47,000 on the September 2022 SCA. When questioned about this during his background investigation, he admitted that he did not have a good reason for not listing several of those significant delinquent debts on the SCA.

Applicant was remorseful about his past misconduct in the military, but his failure to accept responsibility for his lack of candor, to include his inconsistent testimony at the hearing, is troubling. As he matures, he may yet develop a better understanding of the importance of full candor in the security clearance process. Security clearance eligibility decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Applicant was discharged from the USAF because he could not learn from his mistakes, and he had a history of not following rules, laws, and regulations. His failure to be transparent and accept full responsibility for his actions leaves me with continuing doubt about his current reliability, trustworthiness, and good judgment. None of the mitigating conditions apply. Personal conduct 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 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(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines F and E are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

I considered Applicant’s responsible behavior of addressing his financial responsibilities, his awards, and accolades from his colleagues, however, Guideline E raised substantially more serious issues in the context of the whole person. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that although financial consideration security concerns are mitigated, the personal conduct security concerns are not 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:	FOR APPLICANT
Subparagraphs 1.a through 1.j:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge