



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



In the matter of:)
)
) ISCR Case No. 23-02507
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

04/21/2025

Decision

DORSEY, Benjamin R., Administrative Judge:

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

Statement of the Case

On July 16, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and J (criminal conduct). Applicant responded to the SOR on August 6, 2024, and requested a hearing before an administrative judge. The case was assigned to me on January 15, 2025.

The hearing was convened as scheduled on February 27, 2025, over the Microsoft Teams online network. Government Exhibits (GE) 1 through 13 were admitted in evidence without objection. I admitted GE 14 over Applicant's objection, which went to the weight of the evidence, as opposed to the document's admissibility. Applicant testified but did not provide any documentary evidence. At Applicant's request, and after I amended the SOR to conform to the evidence as I will discuss below, I reconvened the hearing on March 24, 2025, to address the additional SOR allegations by which the

SOR was amended, and to provide the opportunity for the parties to provide closing arguments. At Applicant's request, I left the record open until March 13, 2025, for either party to provide post-hearing documentation. Neither party provided post-hearing documentation. Despite requesting the reconvened hearing and proper notice being provided both during the hearing on February 27, 2025, and via a Notice of Hearing on February 28, 2025, Applicant did not appear at the reconvened hearing on March 24, 2025.

In an e-mail dated April 3, 2025, Applicant claimed that he wrote down the wrong date for the reconvened hearing, instead thinking it was set for March 27, 2025. Noting the sufficient notice that he received of the March 24, 2025 reconvened hearing date, the passing of the deadline for providing post-hearing documents, the over three-hour hearing already held, and the lateness of his e-mail notifying me of the reason for his failure to appear, I advised the parties that the record closed on March 24, 2025, and I would issue a decision based upon that record evidence with no further proceedings. I marked the e-mail correspondence from April 3, 2025, as Hearing Exhibit (HE) I. DOHA received a transcript of the first hearing on March 6, 2025 (Tr. I), and a transcript from the reconvened hearing on March 31, 2025 (Tr. II). (Tr. I 118-133; Tr. II 4-7)

Amendment to the SOR

On Department Counsel's motion, to conform to the evidence, and without objection, I amended the SOR to include two additional allegations under Guideline F, as follows:

1.p. You failed to file federal income tax returns for tax years 2022 and 2023, as of the date of the hearing, as required. The tax returns remain unfiled.

1.q. You failed to file a State of Missouri income tax return for 2022 as of the date of the hearing, as required. That tax return remains unfiled.

(Tr. I 118-133; Tr. II 4-7)

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since about January 2023. He earned a high school diploma in 2013 and has taken some college courses without earning a degree. He married in 2016, separated in mid-2017, and divorced in 2019. He has a seven-year-old son. He served on active duty with the U.S. Navy from 2013 until January 2018. He had an 11-month deployment in 2013. He earned a general discharge under honorable conditions after a pattern of misconduct for issues that I will discuss herein. (Tr. 25-29, 43-44, 118; GE 1, 2)

In the SOR, the Government alleged that Applicant had 15 delinquent accounts totaling approximately \$50,000 (SOR ¶¶ 1.a through 1.o). It alleged his failure to file his federal income tax returns for tax years 2022 and 2023, as required. It also alleged his failure to file State B income tax return for tax year 2022, as required (SOR ¶¶ 1.p and 1.q). He admitted the Guideline F SOR allegations with the exception of the debt in SOR ¶ 1.o, which he denied because he claimed he did not live in the jurisdiction where the judgment was entered when it was entered. He neither admitted nor denied the allegations in SOR ¶¶ 1.p and 1.q, so I have treated those allegations as having been denied. His admissions are adopted as findings of fact. The Guideline F SOR allegations are established through his admissions, the Government's March 2023, October 2023, and June 2024 credit reports, its case information system records, and Applicant's testimony regarding his failure to file his federal and state income tax returns, as required. (SOR; Answer; Tr. I 118-133; GE 2-6, 13, 14)

The personal loan for about \$4,845 alleged in SOR ¶ 1.a has not been resolved. Applicant opened this account in about 2013 when he first entered the military. He contacted the creditor to make a payment arrangement in about April 2023, after he had his security interview with a DOD investigator. He claimed that he made a payment arrangement with the creditor to pay \$180 per month until the account is paid in full. He claimed he has made some of these payments but has missed some payments as well. He claimed that the last time he made a payment on this debt was in November 2024. He did not provide any documentation regarding this debt or his resolution efforts. (Tr. I 25-25, 60-63; GE 2-6)

The delinquent accounts in the amount of \$16,640; \$3,140; and \$912, alleged in SOR ¶¶ 1.b, 1.c, and 1.h, respectively, have not been resolved. These accounts were all owned by the same creditor but were opened separately. The accounts in SOR ¶¶ 1.b and 1.c were car loans. The account in SOR ¶ 1.h was a credit card. In 2018, Applicant contacted the creditor and agreed to consolidate these accounts into one credit-card account with a balance of about \$20,000. He was required to make payments of \$235 per month on this consolidated account. He made those required payments until 2020 when he lost his job and defaulted on the consolidated account. In April 2023, he contacted the creditor again and agreed to resume his payments on the consolidated account. While he has made approximately ten payments on this account since April 2023, he has missed some of the required payments. The last payment he made on the consolidated account was in November 2024. He provided no documents to corroborate his resolution efforts on these accounts or the consolidated account. (Tr. I 24-25, 66-79; GE 2-6)

The insurance accounts in the amounts of \$70 and \$546 alleged in SOR ¶¶ 1.d and 1.e, respectively, have not been resolved. Applicant opened these accounts in December 2022 and became delinquent on the accounts in about February 2023, when he changed his insurance coverage to a different carrier. He claimed that he paid off

this account in August 2023. He did not provide any documentation to corroborate this payment. (Tr. I 24-25, 79-82; GE 2, 3, 5, 6)

The student-loan account in the amount of \$2,087 alleged in SOR ¶ 1.f has not been resolved. Applicant enrolled in the college to which this debt is owed and opened this account to pay for it in about June 2022. When he enrolled, he arranged to have the required \$25 per month payment automatically deducted from his credit card. He defaulted on the account sometime in February 2023 when the credit card he used to deduct the automatic payment stopped working for deductions, possibly because it expired. He claimed that he called the creditor in about March 2023 to update the credit card from which the payments could be drawn. He claimed the last payment he made on this account was in about May 2023. He did not provide any documentation to corroborate his resolution efforts on this account. (Tr. I 24-25, 82-85; GE 2, 3, 5, 6)

The jewelry-store account in the amount of \$139 alleged in SOR ¶ 1.g has not been resolved. Applicant became delinquent on this account in 2018. He claimed he paid it off in August 2024, when the creditor contacted him. While he claimed he had a receipt for this payment, he did not provide any documentation to corroborate that he paid this account. (Tr. I 24-25, 85-86; Answer; GE 2, 3, 5, 6)

The delinquent child-support debt in the amount of \$9,011 alleged in SOR ¶ 1.i is being resolved. While Applicant has been paying on this account through automatic deductions in the amount of about \$600 per month from his paycheck since March 2024, he testified that his current balance is approximately \$10,000. He testified that most of this sum is credited towards his current monthly obligation, but a small percentage of it is credited towards his arrearage. While his testimony was somewhat unclear, he also claimed that he had some payments automatically withdrawn from his paycheck from April 2023 until January 2024. He claimed that he contacted the child support agency for State A where the child support is owed to set up this "allotment" in March 2023. He provided a document from the relevant agency from State A showing that he made required monthly payments for May 2023, June 2023, July 2023, and a partial payment for August 2023. (Tr. I 24-25, 58-60, 63-66; GE 2-5)

The car loan in the amount of \$3,779 alleged in SOR ¶ 1.j has not been resolved. Applicant became delinquent on this account in about 2021 after he hit a deer and totaled the car. He testified that his insurance paid off the account except for the unpaid interest that was charged off. In April 2023, he made a payment arrangement of \$100 bi-weekly payments beginning in April 2023. He claimed that he had receipts for these payments, but he did not provide any such documents. He claimed that he made some of these required payments and the last payment he claimed he made was in May 2024. (Tr. I 24-25, 86-91; Answer; GE 2-5)

The cable account in the amount of \$366 alleged in SOR ¶ 1.k has not been resolved. Applicant claimed that he paid this account in December 2022. He claimed

that he had a receipt to corroborate that he paid this account, but he did not provide it. (Tr. I 24-25, 91-94; Answer; GE 2, 3, 5)

The delinquent debt for airline tickets in the amount of \$2,158 alleged in SOR ¶ 1.l has been resolved. Applicant incurred this debt in 2015 when he borrowed money for airline tickets. He stopped paying on the loan when he left the military in 2017. He provided a document showing that, in November 2019, the Consumer Financial Protection Bureau (CFPB) found that this creditor had engaged in deceptive financial practices when it overcharged servicemembers and their families for a debt cancellation product that was offered in connection with its loans for airline tickets. Applicant did not provide any evidence to show that the CFPB's finding applied to his delinquency or that it obviated his repayment of this debt. He disputed the debt with a credit reporting agency at the end of 2022, because he thought he was paying too much interest on the loan, but he has not heard back from them, and did not follow up on his dispute. He tried to contact the creditor but could not get in touch with them. He claimed that, as a result of a Google search, he believed the creditor has gone out of business. (Tr. I 24-25, 94-99; Answer; GE 2-4)

The delinquent telecommunications account in the amount of \$972 alleged in SOR ¶ 1.m has not been resolved. Applicant provided a document showing that he made a \$50 payment on this account in April 2023 and two \$40 payments on this account in August 2023. However, he did not provide any documentation to show the terms of any payment arrangement he had with this creditor or the balance on the account. (GE 2-5)

The judgment entered in 2023 on a residential lease account in the amount of \$4,820 listed in SOR ¶ 1.n has not been resolved. Applicant was evicted from the leasehold apartment in January 2023. The judgment represents two months of unpaid rent, but he also failed to make rent payments in July 2022, November 2022, and December 2022. He claimed that he made a \$4,000 payment towards his balance in January 2023, and the \$4,820 listed in the SOR represents the remaining balance. He claimed he last made a payment on this debt in June 2024. He did not provide any documentation corroborating his resolution efforts with respect to this debt. (Tr. I 24-25, 99-103; Answer; GE 13)

The judgment entered in 2020 on behalf of a hospital in State A in the amount of \$1,144 listed in SOR ¶ 1.o has not been resolved. Applicant received in-patient mental healthcare at this hospital for a week in 2018. He does not believe that he had health insurance at the time. He claimed that he contacted the creditor and made a \$115 payment on this account in June 2024, after he received the SOR. He has not made any resolution efforts since this payment. He intends to pay this debt by chipping away at it. (Tr. I 24-25, 103-106; Answer; GE 14)

Applicant did not timely file his federal income tax returns for tax years 2022 and 2023, as required. Those federal income tax returns remain unfiled. He did not file his State B income tax returns for tax year 2022, as required. This State B income tax return remains unfiled. He claimed that he will file those late income tax returns sometime this year. He claimed that he did not file these income tax returns because he has not obtained the appropriate W-2 income forms to do so. (Tr. 113-115)

Applicant had periods of unemployment from October 2022 until November 2022, from May 2021 until September 2021, and from January 2020 through March 2020. He was fired by his employer in May 2018 for misconduct because he submitted his timecard before he completed the hours he claimed he worked. He claimed his discharge from the military was one of the causes of his financial problems. He also claimed underemployment and unemployment caused him to fall behind on his financial obligations. In August 2023, he provided a personal financial statement wherein he claimed that he had a monthly surplus of \$1,097. He testified that he earns a little more money now than he did when he filled out the personal financial statement. He claimed that he has about \$95 in a savings account, about \$1,100 in a checking account, and about \$4,000 in a retirement account. He has not received any financial counseling but has read some financial planning books written by Dave Ramsey. (Tr. I 24-25, 56-58, 107-113; GE 3)

Between 2015 and 2017, Applicant received nonjudicial punishment (NJP) for violating the Uniform Code of Military Justice (UCMJ) on four occasions, which ultimately led to him being separated from the Navy for a pattern of misconduct. He received NJP in December 2017 for failing to follow an order, improper watch standing, and being disrespectful to a superior (SOR ¶ 2.b). He received NJP again in December 2017 for failure to obey an order or regulation (SOR ¶ 2.c). In October 2017, he received NJP for failure to obey an order or regulation and carrying a concealed weapon (SOR ¶ 2.d). In July 2015, he received NJP for assault (SOR ¶ 2.g). In the Answer, he admitted these allegations. He complied with the terms of his punishment for all of these incidents. (Tr. I 24-25, 30-44; Answer; GE 2, 8, 11)

In March 2020, Applicant was arrested for battery (SOR ¶ 2.a). He claimed he acted in self-defense and the charges were ultimately dropped because the statute of limitations passed. In August 2016, he was charged with driving on a suspended license and convicted (SOR ¶ 2.e). In March 2016, he was charged with and convicted of reckless driving for driving 98 miles per hour (MPH) in a 60 MPH zone (SOR ¶ 2.f). In 2014, he was charged with damage to government property and failure to maintain control of vehicle (SOR ¶ 2.h). In the Answer, he admitted these allegations. He has not been arrested since March 2020 and has not had a traffic violation since July 2021. (Tr. I 23-24, 29-30, 45-54; Answer; GE 2, 7, 9, 10, 12)

Applicant has consistently received mental-health and anger-management counseling since March 2023. He has abstained from alcohol since January 2025. (Tr. 117-118)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline 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) a history of not meeting financial obligations; and
- (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.

Applicant had 15 delinquent accounts totaling about \$50,000. These debts have been delinquent for years. He did not file his federal income tax return for tax years 2022 and 2023, as required. He did not file his state income tax return for State B for tax year 2022, as required. The above disqualifying conditions are established.

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

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

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

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

At the outset, I find that Applicant has met the mitigating conditions in AG ¶ 20(e) with respect to the debt in SOR ¶ 1.I. The CFPB found that the creditor for this debt engaged in deceptive practices against servicemembers. I find this finding is a reasonable basis to dispute the debt and the document describing the CFPB's finding substantiates the basis of the dispute. I find on behalf of Applicant with respect to SOR ¶ 1.I.

None of the mitigating factors apply to his remaining debts or to his failure to file his income tax returns. Applicant has not resolved any of the remaining SOR debts or filed the required income tax returns, so his financial issues are ongoing. While he is in the process of resolving his child-support payments, the balance on his arrearage on that debt has increased since the SOR was issued.

While the causes of his financial problems were largely beyond his control (a divorce, underemployment, unemployment), he has not acted responsibly or in good faith with respect to his delinquencies. He has made sporadic, minimal payments on some of his debts. However, despite claiming that he has surplus funds at the end of each month, he has not provided documentation showing payments on any of these debts in months. Moreover, when he claimed that he paid off a debt, he did not provide any documents to corroborate any such payments. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016).

Applicant has not remedied his failure to file his federal and State B income tax returns for the relevant tax years, nor has he provided evidence that he has arranged with the IRS or the State B taxation authority to do so.

Guideline J, Criminal Conduct

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

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

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

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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.

Between 2014 and 2020, Applicant engaged in a pattern of criminal behavior both as a civilian and as a sailor with the Navy. He has been charged with and convicted for some of these criminal acts. The Navy found that he committed some criminal offenses during NJP proceedings. The above disqualifying conditions are applicable.

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

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

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

It has been about five years since Applicant was last arrested and about four years since he had his last traffic infraction. His mental-health and anger-management treatment, as well as his recent decision to abstain from alcohol are positive steps. Given this extended time where he has been free from criminal issues, I find that so much time has passed since his criminal behavior happened that it is unlikely to recur, and it does not cast doubt on his reliability, trustworthiness, or good judgment. I also find that these considerations provide evidence of successful rehabilitation. AG ¶¶ 32(a) and 32(b) fully apply.

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. I have considered his military service and the positive steps he has taken to reform his past, illegal behavior.

Overall, given the lack of progress Applicant has shown in addressing his debts, and his failures to file his income tax returns, the record evidence leaves me with

questions and doubts about his eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns. He mitigated the criminal conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.q:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a-2.h:	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.

Benjamin R. Dorsey
Administrative Judge