



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



In the matter of:)
)
) ISCR Case No. 23-00128
)
Applicant for Security Clearance)

Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2026

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns but failed to mitigate the personal conduct security concern generated by his mischaracterization of the nature of his discharge from the U.S. Army Reserves in 1995. Clearance is denied.

Statement of the Case

On September 26 2024, the Defense Counterintelligence and Security Agency Adjudication and Vetting Services (AVS), issued a statement of reasons (SOR) setting forth allegations under Guideline F, financial considerations, and Guideline E, personal conduct, as to why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The AVS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On October 15, 2024, Applicant answered the SOR, neither admitting nor denying subparagraphs 1.a and 2.a, admitting subparagraphs 1.b through 1.d, and 2.c, and denying subparagraphs 1.e through 1.h, and 2.b. He requested a hearing, whereupon

the case was assigned to another judge on May 19, 2025. On June 1, 2025, DOHA scheduled a notice of video teleconference hearing for August 5, 2025. On July 30, 2025, the case was transferred to me.

I held the case as originally scheduled and received four Government exhibits, marked and identified as Government Exhibit (GE) 1 through GE 4, four Applicant exhibits, marked and identified as Applicant Exhibit (AE) A through AE D, and considered the testimony of Applicant. The transcript (Tr.) was received on August 14, 2025.

Findings of Fact

Applicant is a 50-year-old married man with two children ages 25 and 11. (Tr. 19) He has been married for 20 years. He earned two years of college credits. (Tr. 20) He has been working as a professional roofer since 1995. (GE 1 at 12) He has been working as a roofing technician with a government contractor since 2022. (GE 1 at 11)

Applicant did not timely file his federal income tax returns for the tax years of 2017, 2020, and 2021, as alleged in subparagraph 1.a. (Answer at 1) Contrary to the allegation in subparagraph 1.a, he filed his 2019 federal income tax return on time. (GE 2 at 17; GE A at 1)

As of the date of the SOR, Applicant owed a federal income tax delinquency of \$7,938 for tax year 2021, as alleged in subparagraph 1.b, and a federal income tax delinquency totaling approximately \$1,222 for tax year 2020, as alleged in subparagraph 1.c.

Applicant filed his 2017 federal income tax return in October 2021. (AE C) There is no delinquent balance. (AE C)

Applicant filed his 2020 federal income tax return in July 2021. (AE B) Since the SOR was issued in September 2024, he has reduced the delinquent balance from \$1,222, as alleged in subparagraph 1.c, to \$567. (AE B)

Applicant filed his 2021 federal income tax return in March 2023. (AE D) As of September 2024, the month when the SOR was issued, the balance was \$7,938. (Answer to subparagraph 1.b at 1) By 2025, Applicant had satisfied the balance. (AE D)

In approximately 2017, Applicant's state of residence levied his income for a tax debt of \$5,300, as alleged in subparagraph 1.d. (Answer at 2) Applicant's inability to pay this debt corresponded with a particularly difficult financial time for Applicant after he had been evicted from his apartment. (Tr. 85) By 2018, he had satisfied the debt completely through the levy. (GE 3 at 8, 11)

The SOR alleges three debts, identified respectively, as "MEDICAL" set forth in subparagraphs 1.e, 1.g, and 1.h, totaling approximately \$1,100. Applicant denies these

debts, asserting that he tried to locate them, but was unable because he did not have enough information to identify them.

The debt alleged in subparagraph 1.f, totaling \$542, is a utility bill. Applicant contacted the creditor. They had no record of this debt. (Tr. 24)

Applicant attributes his financial problems to the erratic pay associated with the roofing business, and the money he spent caring for his mother and grandparents between 2014 and 2020. (Tr. 21, 38) Applicant's financial problems prompted him to borrow money from his 401(k) account several times over the years. The first time was in 2016. (Tr. 40) He and his wife used the money to make ends meet. Subsequently, they were unable to pay the corresponding income tax debts, prompting them two years later in 2018 to make another 401(k) withdrawal. This one totaled \$30,000. (Tr. 41)

In 2020, Applicant's mother and grandparents passed away within three weeks of one another. (Tr. 38) Applicant again withdrew money from his 401(k). This withdrawal totaled approximately \$20,000 and was used primarily to pay Applicant's relatives' funeral expenses. (Tr. 40).

Applicant was unemployed from December 2021 to March 2022. This further stressed his financial situation.

In June 2025, Applicant withdrew \$40,000 from his 401(k) account. (Tr. 45) Using this money, he satisfied the 2021 tax debt and made payments on other non-alleged debts. (Tr. 45)

Currently, Applicant owes approximately \$11,000 in back federal income taxes. (Tr. 34) This includes tax years 2022 and 2024. They are not alleged in the SOR. Applicant only recently was informed about the 2022 federal income tax debt when the IRS contacted him to tell him they had miscalculated the amount of debt due. He is making \$1,000 monthly payments under an agreement with the IRS. (Tr. 22-23)

In January 2022, Applicant began working at his current job. (Tr. 28) The hours were more stable than those of his previous roofing job where he had worked for the previous 27 years. In addition, his annual salary increased from \$65,000 annually to \$113,000 annually. (Tr. 32) Applicant has approximately \$60,000 of remaining money invested in his 401(k) account, and \$3,000 of combined money in checking and savings accounts.

Applicant enlisted in the U.S. Army Reserves in June 1994. (Tr. 52) On October 21, 1994, a fellow private from another company, whom Applicant had been dating, accused him of sexually assaulting her. (GE 4) She reported the episode to her command, which prompted an investigation. As part of the investigation, the investigators interviewed the alleged victim, several individuals whom she had talked to shortly after the alleged episode, and a witness who saw Applicant and the alleged victim together shortly before the alleged incident. In addition, the investigators reviewed a signed letter

from Applicant to the alleged victim shortly after the alleged episode, apologizing for hurting her. (GE 4 at 5) Consequently, the Army Criminal Investigation Command concluded that there was probable cause to believe that Applicant committed the offense of sexual assault. (AE 4 at 1)

Applicant was never prosecuted because he chose, after consulting with his attorney, to accept an offer posed by the prosecutor to leave the Army in January 1995 with a discharge characterized as under other than honorable conditions under Chapter 10 AR 635-00, in lieu of courts-martial, rather than to contest the charge. Subsequently, the Army dropped the charge, as agreed. (GE 3 at 15)

On January 7, 2022, Applicant completed an electronic questionnaire for investigations processing (e-QIP). In response to Section 15 requiring applicants to disclose the nature of their discharge, Applicant characterized it as honorable. During an investigative interview a few weeks later on January 31, 2022, he again characterized his discharge as honorable. (GE 3 at 10) When asked what prompted his discharge, Applicant stated that he could not recall. (GE 3 at 14) When the investigative agent told him that a sexual assault charge led to his discharge, Applicant responded that that was the first time he had ever been informed of it. (GE 3 at 15)

During a March 2022 investigative interview, Applicant acknowledged that he had been charged with assault shortly before leaving the military, but that he thought the assault allegation concerned fighting, not rape. (GE 3 at 15; Tr. 63) He again reiterated that he thought the nature of the discharge was honorable. (GE 3 at 16)

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 several variables collectively 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 ¶ 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 considering 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 guideline, “failure to live within ones 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)

Although SOR pleadings need not be drafted with the specificity of criminal pleadings, they must, at minimum, be drafted specifically enough so that the applicant can prepare a response. Subparagraphs 1.e, 1.g, and 1.h, which only identify the debts as medical bills without providing the specific names of the creditors or any additional information does not meet this threshold. Considering Applicant’s denial of these debts, I resolve them in his favor.

The remaining debts trigger the application of AG ¶19(a), “inability to satisfy debts,” and AG ¶19(c), “a history of not meeting financial obligations.” In addition, Applicant’s failure to file several years of tax returns on time, together with his history of delinquent tax payments, triggers 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.”

Applicant’s financial problems stemmed from circumstances beyond his control, including the inherent instability of the roofing profession, a six-year period between 2014 and 2020 when he cared for his mother and grandparents, all of whom required costly medical care, and a three-month period of unemployment between December 2021 and March 2022.

Although Applicant satisfied all the delinquent SOR debt except approximately \$600 remaining from subparagraph 1.c, he did so by making multiple withdrawals from his 401(k) plan without properly considering the financial penalties and the income tax consequences. As such, this was not a responsible course of action. I conclude that AG ¶ 20(b), “the conditions that resulted in the financial problem are 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,” does not apply.

Nevertheless, considering Applicant’s near complete elimination of the SOR debt, together with his most recent job which is more stable and significantly higher paying than the previous roofing job, I conclude that his financial circumstances are sufficiently under control, such as to mitigate the financial considerations security concerns.

Guideline E, Personal Conduct

The security concern under this guideline is set forth in AG ¶ 15 as follows:

[c]onduct 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.

In January 1995, Applicant was discharged from the United States Army under Chapter 10 AR 635-00, in lieu of courts-martial, for sexual assault of a fellow service member, receiving an other than honorable characterization of service. This triggers the application of AG ¶16(d)(2), “any disruptive, violent, or otherwise inappropriate behavior,” and AG ¶ 16(e), “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.”

There is no record evidence that Applicant has engaged in any criminal conduct since 1994, the year he was charged with attempted sexual assault. He has been married for approximately 20 years. There is no record evidence of any domestic violence-related

issues in that time. Although some of his financial decisions have not been wise over the years, he has worked in his profession for 30 years with no record evidence of any poor job performance. Under these circumstances, Applicant's sexual assault charge no longer generates a personal conduct security concern. I resolve subparagraph 2.a in Applicant's favor.

Applicant's failure to properly disclose the correct nature of his 1994 discharge from the military on his 2022 e-QIP, and later, to an investigative agent, raises the issue of whether the following disqualifying conditions under AG ¶¶ 16 apply:

(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; and

(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.

Considering the apology letter Applicant wrote to the woman who alleged he sexually assaulted her, which was contemporaneous with the allegation, his testimony that he thought his discharge was for fighting, and that he did not know the nature of the discharge was not credible. I conclude that AG ¶¶ 16(a) and 16(b) apply without mitigation. Applicant failed to mitigate the personal conduct security concerns.

Whole-Person Concept

Applicant's lack of credibility that he displayed throughout the investigative process regarding the nature of his 1994 discharge from the military and the circumstances that precipitated it render him an unacceptable candidate for a security clearance.

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-1.h:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraphs 2.a:

For Applicant

Subparagraph 2.b-2.c:

Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge