



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



In the matter of:)
)
) ISCR Case No. 24-00577
)
 Applicant for Security Clearance)

Appearances

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

01/17/2025

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns raised under Guidelines F (financial considerations), E (personal conduct), and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 10, 2023. On April 12, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F (financial considerations), E (personal conduct), and J (criminal conduct). 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 responded to the SOR via email dated July 26, 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 August 29, 2024, including documents marked as Items 1 through 8. A complete copy of the file of relevant material (FORM)

was provided to Applicant shortly thereafter. On September 13, 2024, he received the FORM and was provided an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. The period for Applicant to respond lapsed without a response. The case was assigned to me on December 6, 2024. Items 1 and 2 are already part of the administrative record and need not be admitted. Items 3 through 8 are admitted in evidence without objection.

Findings of Fact

In his Answer, Applicant admitted all allegations in the SOR (SOR ¶¶ 1.a through 1.d, 2.a, and 3.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 29 years old. He was born, raised, and graduated from high school in State 1, in 2013. In August 2013, he enrolled in a college in State 2, and subsequently earned his bachelor degree in electrical engineering in May 2021. He did not work from November 2017 to about June 2021, which enabled him to enroll in more courses to finish his engineering degree requirements. Applicant has never been married and does not have children. (Items 3, 8)

Applicant accepted his first engineering position in State 2 after graduation. From June 2021 through July 2023, he worked as a full-time manufacturing engineer for a private company. (*Id.*)

In April 2022, Applicant was stopped by police officers in State 2 for excessive speeding on his drive home from a football game. When asked whether he had been drinking alcohol, he admitted he drank one beer an hour earlier. He said he passed the field sobriety tests administered by police officers, and that he took a breathalyzer test, but did not remember the results. He was ultimately arrested and charged with excessive speeding, driving under the influence of alcohol (DUI), and possession of marijuana after police officers searching his car incident to arrest found a small bag of marijuana behind the passenger seat. (Items 3, 7, 8)

Applicant denied being drunk and claimed the marijuana belonged to a passenger and friend who he had dropped off before being stopped by police officers. He was taken to the police station and a second breathalyzer was administered. He said the second breathalyzer registered a blood alcohol content (BAC) level of .01, well below the legal limit, and that he was allowed to drive himself home after posting a bond. He went to court later, and said he was not convicted of DUI, but that he was required to participate in drug and alcohol testing once a week for three months. He said he never tested positive for either.

In August 2022, Applicant did not attend his traffic court hearing, and in January 2023, the court criminally charged him with failure to appear. (Items 7, 8) He claimed the failure to appear charge related to a different speeding incident, and that he forgot about the hearing. (Item 8 at 2) The Federal Bureau of Investigation (FBI) report, however,

shows the failure to appear charge shares the same local case number as his April 2022 criminal incident. (Item 7 at 5)

The SOR alleged Guideline J security concerns related to Applicant's April 2022 charge for DUI, marijuana possession, and a subsequent failure to appear at court hearing. In his Answer, Applicant admitted the allegations, and commented: "[The] issue has been taken care of and resolved." (SOR Answer) He did not submit any documentary evidence to support this assertion.

In July 2023, Applicant moved back to State 1, his home state, and started working as an electrical engineer for a defense contractor. He completed his first SCA in August 2023. He disclosed his DUI arrest, but listed the incorrect date. (Item 3)

Applicant did not disclose any financial delinquencies in response to questions in Section 26 - Financial Record, Delinquency Involving Routine Accounts. He responded "no" when asked whether, **in the last seven (7) years**: "you had bills or debts turned over to a collection agency," and "you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed." In September 2023, he also denied having delinquent debts when asked by the DOD investigator conducting his background interview. It was only after the investigator confronted him with specific debts that he agreed, and discussed them. (Items 3, 7, 8) The SOR alleged Guideline E security concerns for the failure to disclose delinquent debts in response to the above questions.

Under Guideline F, the SOR alleged four delinquent debts totaling over \$48,000. Applicant admitted all debts in his Answer, and his admissions are supported by the record evidence including the SCA, credit bureau reports (CBRs), statements he made during his background interview, and criminal information reports. Applicant said he paid off the debt in SOR ¶ 1.d after learning about it. (Items 1-5, 8) He described his current financial situation as getting better now that he has a good-paying job and he is better at managing his finances. He reported being able to meet his financial obligations. He did not provide documentary evidence to support his case. (Item 8 at 5)

The evidence regarding the alleged financial concerns is summarized below:

SOR ¶ 1.a (\$32,278): Applicant admitted this debt, an individual car loan opened in November 2021. He paid the monthly bill on time until he totaled the car in November 2022 in an accident. He was unaware the insurance lapsed at the time of the accident and the insurance company refused to pay. He claimed he was working with the creditor but he did not have a payment plan. The debt was charged off in about October 2022 (Item 4 at 3; Item 5 at 2; Item 8 at 3) This debt is unresolved.

SOR ¶ 1.b (\$11,762): Applicant admitted this debt, an individual credit card account opened in May 2021. He said he stopped paying this debt to pay other debts. He also said he contacted the creditor in July 2023, does not have a payment plan, but that he intends to pay the debt. The debt was charged off in March 2023. (Item 4 at 3; Item 5 at 2; Item 8 at 4) This debt is unresolved.

SOR ¶ 1.c (\$2,929): Applicant admitted this debt, an individual line of credit account opened in December 2021. He said he stopped paying this debt to pay other debts. He does not have a payment plan, but intends to pay the debt. The debt was charged off in March 2023. (Items 4, 5, 8) This debt is unresolved.

SOR ¶ 1.d (\$1,130): Applicant admitted this debt, an individual account for a month-to-month apartment lease in State 2, after expiration of his one-year lease. He said he was unaware he owed this debt, but paid it after he received notice. This debt is listed as a paid collection in the August 2023 CBR that was settled for less than the full amount. (Item 4 at 5; Item 8 at 4-5) This debt is resolved.

Applicant did not provide documentation or information about his earnings, savings or checking accounts, or other financial accounts. Nor did he provide documentation or information about his monthly expenditures. It is unknown whether he participates in or actively contributes to a 401(k) retirement plan. The record is also void of any financial counseling or budgeting information.

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 in this case. Applicant's delinquent debts are recent, ongoing, and unresolved. He did not produce evidence to establish that his financial issues occurred under circumstances that are unlikely to recur. Applicant has been gainfully employed as an engineer since June 2021, a month after graduation. He did not disclose information about his earnings, savings or checking accounts, or other financial assets; nor did he disclose information about his routine household expenses to permit me to evaluate whether the failure to pay his debts was reasonable under the circumstance. Applicant is credited with resolving the debt in SOR ¶ 1.e, however, he has not taken meaningful steps to resolve his other debts in the SOR.

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 his delinquent debts.

Applicant's financial issues continue to cast doubt on his current reliability, trustworthiness, and judgment. He has not met his mitigation burden.

Guideline E, Personal Conduct

The security concern under this guideline is described in AG ¶ 15:

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 provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to disclose his delinquent debts in his SCA. This is sufficient to establish the disqualifying condition in AG ¶ 16(a).

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(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

AG ¶ 17(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.

None of the above mitigating conditions are established in this case. Applicant did not disclose his financial issues in the SCA, and when the investigator initially asked, he denied having any delinquent debts. He acknowledged and discussed his delinquent debts only after the investigator confronted him with his specific delinquent debts. Applicant's detailed knowledge and discussion about his delinquent debts only after being confronted with them indicate his failure to disclose the information was deliberate, raising questions about his reliability, trustworthiness, and ability to protect classified or sensitive information. Personal conduct security concerns remain in this case.

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 not established. Applicant, in April 2022, was charged with excessive speeding, DUI, and possession of marijuana. He failed to appear for his court hearing and, as a result, was charged with failure to appear in January 2023. Though Applicant stated he resolved the matter, he did not present evidence to support his assertion. The status of the matter is unknown, not enough time has passed since the criminal conduct occurred, and there is insufficient evidence to find that the conduct is unlikely to recur. It is Applicant's burden to mitigate criminal conduct security concerns, and he has failed to do so. Questions and doubts about Applicant's current reliability,

trustworthiness, and judgment; and his willingness to comply with federal laws, rules, and regulations remain in this case. The criminal 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 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, E, 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 at this time. I conclude Applicant did not mitigate security concerns based on financial considerations, personal conduct, and criminal conduct.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against 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