



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



In the matter of:

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ISCR Case No. 23-00605

Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel

For Applicant: Personal Representative

01/21/2025

Decision

Curry, Marc E., Administrative Judge:

Applicant's debts were caused by circumstances beyond his control, and he has been making responsible, good-faith efforts to resolve them. He has mitigated the financial considerations security concern. His explanation for omitting his delinquencies from two security clearance applications was not credible. He has not mitigated the personal conduct security concerns. Clearance is denied.

Statement of the Case

On September 18, 2023, Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On September 29, 2023, Applicant answered the SOR, admitting the allegations and requesting a hearing, whereupon the case was assigned to me on May 3, 2024. On June 5, 2024, the Defense Office of Hearings and Appeals issued a notice of video teleconference hearing, scheduling the hearing on July 18, 2024. The hearing was held as scheduled. At the hearing, I received seven Government exhibits (GE 1 – GE 7), 15 exhibits from Applicant (Applicant's exhibit (AE) A through AE O), and the testimony of Applicant and eight character witnesses. Also, I took administrative notice of the discovery letter mailed from Department Counsel to Applicant, dated November 21, 2023, marking it as Court Exhibit (CE) I.

The parties did not complete the presentation of their respective cases by the close of business, prompting me to continue the case to July 30, 2024, per agreement of the parties. The rescheduled hearing was completed that day. Later the same day, Applicant emailed a supplemental closing argument. On July 31, 2024, I emailed Department Counsel, asking her if she had any objections, and whether she desired to submit a response. On August 1, 2024, Department Counsel emailed me, expressing no objection to Applicant's submission, and filing a response. On August 2, 2024, Applicant submitted another supplemental closing argument. Department Counsel did not object to its submission, whereupon, I identified it, together with both parties' post-hearing submissions, as CE II and closed the record. DOHA received a transcript of the first part of the hearing (Tr. I) on July 29, 2024, and the transcript of the second part of the hearing (Tr. II) on August 12, 2024.

Findings of Fact

Applicant is a 69-year-old married man with two adult children. He graduated from a military academy in 1979 and served on active duty in the Army through 1990. (GE 1 at 5) He was honorably discharged. (GE 1 at 16) That year, he also earned a master's degree. (GE 1 at 1 at 10)

Applicant has spent his civilian career consulting for various defense contractors. He is highly respected in his field of expertise. Per a coworker who worked with him daily between 2020 and 2022, Applicant is a man of "impeccable character" who always completed his tasks with due diligence. (Tr. I at 18) A colleague who worked with him in 2016 described Applicant as a straight shooter, "who will tell you how it is", and as a person with a wealth of knowledge and subject-matter expertise in his field. (Tr. I at 26) Another coworker described him as a stellar performer who is "honest as the day is long." (Tr. I at 34) Applicant has held a security clearance for 40 years. (Tr. I at 125) He has been unemployed since April 2023, pending the outcome of the security clearance eligibility hearing. (Tr. 14)

Over the years, Applicant incurred approximately \$107,000 in delinquent debt. (Answer at 1-2) His finances were stable until approximately 2006, when his terminally ill

father-in-law moved into his home, and Applicant's wife, a nurse, quit her job to care for him. (AE O). Applicant's father-in-law subsequently passed away in August 2007. (Ex O) Less than a year later, Applicant's mother moved in after a doctor diagnosed her with dementia, prompting Applicant's wife to remain home to care for her until his mother's death in January 2012. (AE O) Absent his wife's income, Applicant began to continually withdraw money from his individual retirement account (IRA) to make ends meet. (Tr. II at 7)

When Applicant's mother passed away in 2012, Applicant and his siblings disagreed about Applicant's role as the holder of a power of attorney for her estate. (Tr. 112; GE 3 at 7) Subsequently, their disagreements led to litigation, which Applicant ultimately lost. In sum, the litigation cost him approximately \$100,000. (Tr. I at 114)

In May 2014, Applicant lost his job after a contract expired. (Tr. II at 9; AE O) He remained unemployed through June 2015. (GE 1 at 13) By the time he regained employment in 2015, he had depleted his IRA. (Tr. II at 7)

When Applicant was unemployed, he began researching a fast-food carryout franchise. (Tr. II at 10) Subsequently, he financed the purchase of a restaurant franchise, using a \$200,000 home equity line of credit. (AE B) The business was not successful, prompting Applicant to attempt to sell it in 2019. Unable to sell the business, Applicant met with a business attorney who recommended that he close it. (Tr. I at 119; AE O at 2). Following the attorney's recommendation, Applicant closed it later that year. (Tr. I at 121)

Deeply in debt, Applicant sold his single-family home and moved into a townhouse he owned and had previously used as a rental property. (AE N; AE O at 2) It was less than half the size of his single-family home. He then consulted a bankruptcy attorney who recommended that he not pay his delinquent debts, in preparation for a bankruptcy filing. (AE O at 2; Tr. I at 123) Applicant opted not to file for bankruptcy protection, and instead, he decided he would work to satisfy his debts. Applicant then read a book by a prominent personal finance expert and began using his method to begin resolving the debt. (Tr. I at 86)

Subparagraph 1.a, an account totaling \$752, is from a credit card processing company related to Applicant's failed business. (Tr. I at 84) By July 2024, he had satisfied this debt in full. (AE A)

Subparagraph 1.b, totaling \$7,436, is a credit card account that Applicant used for business expenses. (Tr. II at 22). Applicant has been making \$5 monthly payments since 2020. (Tr. II at 23) He recognizes that this payment is nominal; however, he has been unemployed since losing his security clearance in April 2023, receiving a fraction of what he earned before his layoff. (Tr. I at 108, 123)

Subparagraph 1.c is a credit card account, totaling \$13,859. It became delinquent in March 2022. (Tr. II at 25) In December 2023, the collection agent contacted Applicant and proposed a balance reduction to \$6,874. (AE H). Under the terms of the proposal, Applicant

was to begin paying monthly \$764 payments. (AE H) Applicant informed the collection agent that he could not begin the payment plan because he was unemployed. In response, the creditor informed him to contact them once he was again gainfully employed. (Tr. 27)

The debt alleged in subparagraph 1.d, totaling \$19,607, is a personal credit card that Applicant opened in 2008. (Tr. 27) Applicant's last payment was in December 2020. (Tr. 28) Recently, he contacted the creditor and informed them he was unemployed and did not have sufficient income to begin satisfying the debt. (Tr. 28) The creditor asked him to contact him when he had sufficient funds to begin payments. (Tr. 28)

The debt alleged in subparagraph 1.e, totaling \$3,996, is a delinquent credit card account. (Tr. 29) Applicant settled this debt in March 2024. (GE 7 at 3)

The debt alleged in subparagraph 1.f, totaling \$61,495, is a delinquent business loan related to the failed fast-food franchise. (Tr. II at 31) It remains outstanding. (Tr. II at 31) In the past two years, Applicant satisfied a \$2,869 federal income tax delinquency for tax year 2020, and he satisfied a \$327 credit card bill. (AE G at 4; AE E)

Applicant receives \$73,301 annually in unemployment compensation. (AE L at 2) In an effort to generate more disposable income, Applicant obtained a loan modification of the mortgage loan on his townhome in July 2024. (AE J) He is using a debt reduction strategy that he read in a book by a financial planning advisor, in which he is focusing on satisfying the smaller debts and on "keeping [the] personal ones current [while] trying to pay down all the business ones." (Tr. I at 187)

Applicant failed to disclose his delinquent finances on security clearance applications, completed in 2021 and 2022, respectively. He attributed the omissions to "failing to give [them] the attention to detail that [they] deserved," and instead, to clicking "no, no, no, no, no, all the way down" the column of financial question inquiries on the applications. (Tr. I at 132; Tr. II at 34)

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 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 deciding.

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 in light of 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 concern, “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.” (AG ¶ 18) Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 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;

(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.

Applicant's financial problems are ongoing. Consequently, AG ¶ 20(a) does not apply.

Applicant's financial problems did not occur because of foolish or profligate spending. Instead, they occurred gradually over a ten-year period, beginning when his wife, a professional nurse, stopped working to care for two of their elderly, ill parents over a six-year period, and they continued through a lengthy unemployment and a failed business venture.

Throughout Applicant's financial problems, he has dealt with them proactively, selling his home and moving into a smaller residence to generate income, consulting with a business attorney when his business was failing, and developing and implementing a debt resolution strategy learned from reading a book by a prominent financial advisor. Consistent with the plan of paying smaller debts first, then focusing on the larger ones, Applicant has satisfied the debts alleged in subparagraphs 1.a and 1.e, and is making payments toward the next smallest SOR debt, alleged in subparagraph 1.b. In addition, he has satisfied approximately \$3 ,100 of debts that were not alleged in the SOR. Under these circumstances, I conclude that AG ¶ 20(b), 20(c), and 20(d) apply. In sum, Applicant has mitigated the financial considerations security concern.

Personal Conduct

Under this guideline, "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." (AG ¶ 15) Moreover, "of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes." (*Id.*)

Applicant's failure to disclose financial information on two security clearance applications raises the issue of whether the following disqualifying condition under AG ¶ 16 applies:

(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.

Given the length of time Applicant has held a security clearance, it is not credible that he could unintentionally neglect to include his financial delinquencies on, not one, but two security clearance applications completed within a 15-month period. I conclude that AG ¶ 16(a) applies without mitigation.

Whole-Person Concept

Since graduating from a military academy, Applicant has enjoyed an illustrious career, both in the Army and in the civilian contracting field. However, his falsification of his security clearance applications raises serious security concerns that he was unable to mitigate.

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.f: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a – 2.b: Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge