



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00032

Appearances

For Government:
Karen Moreno-Sayles, Esquire, Department Counsel

For Applicant:
Pro se

07/30/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated the security concerns raised under the financial considerations adjudicative guideline, but he did not mitigate concerns under the personal conduct guideline. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on October 28, 2016 (the 2016 Questionnaire). On July 16, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 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 adjudicative guidelines (AG) effective within DoD after June 8, 2017.

On August 2, 2024, Applicant responded to the SOR in writing (SOR Response or Item 1). He requested that his case be decided on the written record in lieu of a hearing. In his Answer, he denied the SOR allegations and provided information supporting his denials. He also attached four documents. On October 30, 2024, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM). A complete copy of the FORM, consisting of Items 1 to 12 and the Government's arguments in support of the SOR, was provided to Applicant. He received the FORM on December 18, 2024, and submitted a response in an undated document (FORM Response). He attached to the Response a copy of the SOR Response and the same four exhibits, which I have marked as Applicant Exhibits (AE) A through D. The case was assigned to me on March 4, 2025.

Applicant attached to the FORM Response the business card of his Congressman and provided the Congressman's Congressional phone number and address. He provided a comment suggesting that I could receive the Congressman's opinion of Applicant's character if I contacted him. On May 1, 2025, I emailed Applicant and explained that his suggestion that I contact the Congressman was not an option available to me and that if he wanted to submit a character reference letter from the Congressman, I would give him the time and opportunity to do so. Initially, I granted Applicant until May 30, 2025. He subsequently requested additional time, and I granted his request with a final date of June 30, 2025. He emailed me on June 30th and advised that he had discussed his request personally with the Congressman. Applicant reported that the Congressman told him that he was not able to provide a reference letter within the timeframe available due to his official business commitments and staff changes. I have marked my correspondence with Applicant on this matter as Admin Exhibit I and included it in the record.

On June 16, 2025, Chief Department Counsel Julie Mendez (CDC) forwarded to me an email she received from a DoD legislative analyst. With her email, the analyst forwarded an email addressed to me, dated June 9, 2025, from a staff member from the constituent services office of one of Applicant's U.S. senators. This correspondence included a letter from Applicant to the Senator about the facts of this case and his personal, military, and employment history. I have marked the correspondence from the senator's staff and Applicant's communication to his senator as AE E and CDC's email forwarding the correspondence as Admin Exhibit II and included both exhibits in the record.

Findings of Fact

Applicant is 36 years old and works for a DoD contractor. He graduated from high school and enlisted in the U.S. Marine Corps in 2007 and was granted a security clearance. He served for five years and was honorably discharged in July 2012. He submitted the 2016 Questionnaire in connection with his employment with a DoD contractor and again was granted a Secret clearance in 2018. The record does not contain any subsequent applications leaving the 2016 Questionnaire as the most recent

source of personal information in the record. (Item 1 at 10; Item 2 at 5, 9, 11, 13, 23-24; Item 3 at 2.)

SOR Paragraph 1, Guideline F (Financial Considerations)

The Government alleged that Applicant is ineligible for a security clearance because he had three delinquent and unresolved debts. I find the following facts regarding the history and status of the debts:

1.a. Charged-Off Account (\$6,526). Applicant disclosed the existence of this delinquent debt in the 2016 Questionnaire. He wrote that he was unemployed for two years after he was discharged from the Marines, and he was unable to pay this credit-card account. The debt became delinquent in 2012 or 2013. He stated that he was saving funds to pay the debt with a lump-sum payment. He commented further that if the creditor did not accept a settlement, the debt will remain charged off without any further action by him. (Item 2 at 25-26.)

In the SOR Response, Applicant disputed this debt, asserting that it has been resolved. He attached two pages from the IRS. One is a "Form W-2 Wage and Tax Statement" for tax year (TY) 2016 summarizing Applicant's W-2 statement, and the other is a creditor's "FORM 1099-C Cancellation of Debt" summarizing the Form 1099-C. The second document established that the creditor cancelled the debt on December 31, 2016. He did not provide a copy of his tax return for TY 2016 to support his contention that he included this cancelled debt on his return and that he paid the taxes owed on the cancelled debt. (Item 1 at 7-8; Item 2 at 25-26.)

1.b. Collection Account, Retail Store Credit Card (\$1,727). Applicant disputed this debt in the SOR Response. He claims that this account was closed after being paid off. The creditor, however, sued him in small claims court. Applicant defended himself and was successful in having the court dismiss the action in April 2019 due to it being barred from collection by the statute of limitations. The dismissal was without prejudice. Since this is not a resolution on the merits of the case, Applicant has not satisfactorily documented his initial claim that the debt was in fact paid and has been fully resolved. Also, his denial of the SOR allegation based upon the court ruling that the claim was barred by the statute of limitations merely establishes that the claim is no longer enforceable. (Item 1 at 9; Item 2 at 26-27; Item 6 at 80.)

1.c. Collection Account Owed to an Internet Service Provider (\$106). Applicant denied this debt claiming that he paid the last month's payment to his Internet service provider after his discharge from the Marine Corps. In the 2016 Questionnaire, he acknowledged that the service provider and its collection agency had continued to seek payment of a debt he believes he has paid. He wrote that he has disputed the debt two or three times. He attached to the SOR Response a document showing his "chats" with a representative of the successor company to the original service provider. The representative could not find Applicant's account in his computer system. I note that the debt was owed to a predecessor company and had been transferred to a collection

agency. Also, Applicant provided documentation evidencing that the collection agency is out of business. At this time, I conclude that Applicant has exhausted his options to document his denial of this debt. (Item 1 at 4, 10-13; Item 2 at 27-28.)

SOR Paragraph 2, Guideline E (Personal Conduct)

The Government alleged that Applicant is ineligible for a security clearance because he had engaged in conduct that involved questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations. I find the following facts regarding this allegation and Applicant's denial:

2.a. February 2022 termination from U.S. Government Contractor for Time and Attendance Fraud. Applicant's former employer investigated the accuracy of Applicant's timesheets during the period January 2020 to February 2022. The employer provided the DoD Inspector General's office, in a letter dated January 4, 2023, the results of its investigation of Applicant's time records and interviews with relevant parties, including Applicant. The employer further noted that Applicant "did not provide a credible explanation" of his conduct. The employer concluded that he charged 770.5 hours on his timesheet that he did not work. He did this by not "badging out" when he was on a break or otherwise not working. The report also concluded that as a result of Applicant's timesheet fraud, the employer, and ultimately the U.S. Government paying the employer, paid for services that were not rendered. Applicant's fraud caused a significant financial loss to his employer, after it refunded the payments it received from the contractor's Government customer. As a result of its investigation, the employer terminated Applicant on February 7, 2022. (Item 5; Item 8.)

In the SOR Response, Applicant claimed that he had been wrongfully terminated because the accusation of fraud was "false." He asserted that his employer eliminated his position with new technology and that was the real reason for his termination. He claimed that other employees did the same thing as he did and that this "was a common workplace practice among employees which happened often during breaks, lunch, or going to other buildings on the campus to work in other departments." (Item 1 at 4; AE E at 5.)

Whole Person Evidence

As noted, Applicant served in the Marine Corps for five years and received an honorable discharge in 2012. As a Marine, he worked on the maintenance of air traffic control equipment. He also worked for a U.S. DoD contractor for six years working on an important program. He was employed by the contractor that terminated him for about four years, and has worked for another contractor for over three years. He asserts that he has always performed his military and civilian jobs well. He has held a security clearance since 2007 without any security-related issues. Except for the matter alleged in the SOR, Applicant asserts that he has never been accused of any misconduct or time-sheet fraud and has enjoyed "a flawless record." (SOR Response at 5; AE E at 5.)

The Senator's Constituent Services Liaison noted in her email that the supporting letter Applicant sent to the Senator was written under circumstances stating that the information provided in his letter was represented as "true and accurate." Applicant set forth in his letter biographical information summarized in the preceding paragraph. The staff member asked that I consider the information provided by Applicant. (AE E at 1-3, 5.)

Policies

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

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under

this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 - Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 facts of this case establish the following potentially disqualifying condition set forth in AG ¶ 19:

- (c) a history of not meeting financial obligations.

The burden, therefore, shifts to Applicant to mitigate security concerns under Guideline F.

The guideline includes the following three conditions in AG ¶ 20 that can mitigate security concerns arising from Applicant's financial history:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (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.

The record evidence establishes AG ¶ 20(a). The debts arose long ago. His failure to resolve his debts in a timely manner was limited to three occasions. These long-ago lapses in responsible conduct, alone, do not cast doubt on his current reliability, trustworthiness and good judgment.

AG ¶ 20(b) is not established. Applicant did not provide evidence that he failed to pay these debts over the years due to circumstances beyond his control. Moreover, he did not act responsibly by addressing these relatively small debts when he had increased financial resources working for DoD contractors. Ignoring a debt until it was no longer enforceable is hardly responsible conduct.

AG ¶ 20(e) is only partially established. Applicant disputed each of the debts as invalid. However, he did not fully document that he paid taxes on the cancelled debt alleged in SOR subparagraph 1.a. His documentation showing that the debt alleged in SOR subparagraph 1.b was unenforceable is evidence of the debt being disputed, but that is not evidence of mitigation. He never took responsible actions to pay this debt.

Paragraph 2 – Guideline E, Personal Conduct

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 describes the following conditions that may raise security concerns and potentially be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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 individual may not properly safeguard classified or sensitive information; and

(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 individual may not properly safeguard classified or sensitive information. This includes but is not limited to, consideration of:

- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

The record contains substantial evidence of Applicant's timecard fraud to establish the allegation set forth in SOR subparagraph 2.a and the potentially disqualifying conditions quoted above. The employer's conclusions following an internal investigation are entitled to some deference. ISCR Case No. 18-00496 at 4 (App. Bd. Nov. 8, 2019). Applicant's fraud in 2020 and 2021 raises serious questions about his judgment, reliability, candor, and most significantly, his willingness to comply with rules and regulations. His conduct indicates that he may not properly safeguard classified or sensitive information when doing so might conflict with his personal priorities. When the information about his fraud is combined with his unwillingness to resolve properly the debts that have been outstanding and unresolved for many years, there is an even longer pattern of irresponsible conduct.

Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by his conduct. AG ¶ 17 sets forth seven conditions that could mitigate security concerns arising under Guideline E. Only the following two conditions are potentially applicable:

- (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
- (f) the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(c) does not apply. Applicant's timecard fraud was not minor. His fraudulent behavior occurred frequently over a two-year period. Insufficient time has passed to support a conclusion that other inappropriate conduct is unlikely. He has not acknowledged that his actions were wrong and pledged not to repeat them. Lastly, the offense for which Applicant was terminated casts significant doubt on his reliability, trustworthiness, and judgment.

Applicant asserted that the claim of timecard fraud he was accused of perpetrating was false and was used as an excuse to terminate him and replace his job with new technology. In essence, he claimed that the evidence against him was unreliable. However, his employer established the reliability of its claims by reporting them to the

DoD Inspector General and repaying the Government for the monies Applicant was paid but failed to work. For his part, Applicant declined to have a hearing at which he could have presented his positions on his former employer's claim and his response. In doing so, he also avoided placing his credibility before the decisionmaker. Applicant's employer interviewed him about its investigative findings and concluded that Applicant's version of the facts lacked credibility. Under all of these circumstances, Applicant has not demonstrated that the offense for which he was accused was unsubstantiated. Applicant failed to meet his burden of establishing mitigation under AG ¶ 17(f).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given weight to Applicant's military service and years of working in the U.S. defense industry. He provided no documentary evidence to support his contention that his work over the years has been "flawless," such as performance reports or letters of recommendations, so I cannot assess that claim. I have resolved the Guideline F allegations in Applicant's favor because the debts are old, and the total amount of the unpaid debts is relatively small. They no longer have any material security significance. However, the debts he disputes remained unpaid and unresolved over the years and when combined with the timecard fraud that resulted in the termination of his employment, there is a longer pattern of unreliable conduct and poor judgment. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: 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 Applicant national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge