



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



Appearances

For Government: Mark D. Lawton, Esq., Department Counsel,
For Applicant: *Pro se*

03/18/2025

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On August 16, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations), Guideline E (personal conduct), and Guideline J (criminal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant submitted a response to the SOR on September 8, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on May 3, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice on June 13, 2024, scheduling the matter for a video conference hearing on July 16, 2024. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1 through 8. Applicant testified but did not submit documentation or call any witnesses. At Applicant's request, I kept the record open until August 5, 2024, to enable him to submit documentation. He timely submitted documentation that I marked collectively as Applicant Exhibit (AE) A and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on July 24, 2024.

SOR Amendment

I granted Department Counsel's motion at the hearing to amend the SOR to conform to the evidence by adding the following allegations, pursuant to ¶ E3.1.17 of the Directive:

SOR ¶ 1.o: "You failed to file, as required, your federal income tax return for the tax year 2023. As of the date of this amendment, the tax return remains unfiled."

SOR ¶ 1.p: "You failed to file, as required, your state income tax return for the tax year 2023. As of the date of this amendment, the tax return remains unfiled."

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.p, 2.a, 2.c-2.d, and 3.a, and he denied SOR ¶¶ 2.b and 2.e. SOR ¶ 1.a was cross alleged as SOR ¶ 2.a. SOR ¶¶ 1.a, 2.d, and 2.e were cross alleged as SOR ¶ 3.a.

Applicant is 34 years old. He has never married and he has an 11-year-old child. He obtained his high school diploma in 2008 and earned an associate degree in 2016. (Tr. 7, 24, 112-114, 128-130; GE 1-3; AE A)

Applicant enlisted in the U.S. military from August 2008 and was honorably discharged in August 2012. He served in the Marine Corps Reserve from November 2015 and was honorably discharged in May 2019. He was unemployed from August 2012 to January 2013, September 2014 to April 2016, and October 2019 to October 2020. He worked for a defense contractor from March 2016 to April 2018. He then worked for two U.S. Government agencies, one from April 2018 to September 2019 and another from October 2020 to October 2021. He was terminated on both occasions during his probationary periods. He worked for various defense contractors from October 2021 to April 2023. Since then, he has worked in administrative technical security support for his current employer, another defense contractor. He was first granted a security clearance when he enlisted in the U.S. military. (Tr. 5, 7-9, 24-26, 33-34, 108; GE 1-3)

Guideline F: Financial Considerations and Guideline E: Personal Conduct

In August 2019, Applicant was charged with misdemeanor theft of government property and he pled guilty in November 2020. While a reservist assigned to an acquisition command at a U.S. military base, he was given administrative credentials for the processing of U.S. Government travel charge card (GTCC) claims and applications for

new cards. He fraudulently used his own GTCC as well as the GTCC of another service member, who had relinquished it to Applicant upon that service member's retirement, and he obtained an additional GTCC under a fictitious name, for unauthorized charges not associated with travel for his government job, to include several cash payments to himself, in the approximate amount of \$22,502. He was sentenced to five days jail time, suspended, two years' supervised probation, and ordered to pay \$17,899 in restitution. As of the date of the hearing, Applicant had not yet paid the restitution in full. He owed approximately \$13,000. (SOR ¶¶ 1.a, 2.a, 3.a; Tr. 27-34, 57, 102-103, 107-109; GE 1, 3-4)

Three judgments were entered against Applicant in the approximate amounts of \$17,808, \$1,146, and \$2,096 in November 2022, January 2021, and September 2020, respectively. (SOR ¶¶ 1.b-1.d) He also has nine delinquent consumer debts, totaling \$31,878 (SOR ¶¶ 1.e-1.k, 1.m-1.n), and a \$388 delinquent medical debt (SOR ¶ 1.l). His delinquent debts are established by his admissions in his March 2022 security clearance application (SCA), his August 2023 response to interrogatories, court records, and credit bureau reports (CBRs) from February 2023, August 2023, and July 2024. (Tr.; GE 1, 3, 5-8)

The \$17,808 judgment in SOR ¶ 1.b was obtained against Applicant and two former roommates by their former landlord for damage to her basement. He provided documentation reflecting the creditor notified him in August 2024 that two wage garnishments were filed against him for \$3,049 and \$5,715, for a total of \$8,765, and no pending wage garnishments were in place against his employer. This debt remains unresolved. (Tr. 34-37, 101-102; AE A)

The \$1,146 judgment in SOR ¶ 1.c is for an auto insurance claim brought against Applicant. He provided documentation reflecting the creditor contacted him in February 2022 requiring payment in full of \$1,272 for his license to be reinstated. He testified he was unaware of the judgment until September 2023. He was unable to make payments toward the judgment because his wages were being garnished for SOR ¶ 1.b. He stated he spoke to the creditor in approximately May 2024 and he intended to pay the judgment within the week of the hearing. This debt remains unresolved. (Tr. 37-39, 101; AE A).

The \$2,096 judgment in SOR ¶ 1.d is for furniture that Applicant purchased for his roommate. He has not made any payments toward this judgment and this debt remains unresolved. (Tr. 39-41)

For the consumer debts, Applicant provided documentation reflecting: (1) SOR ¶ 1.i has been listed as paid on his CBR as of August 2023, and (2) he made payments totaling \$474 to SOR ¶ 1.g, to include a \$79 payment in September 2023, and his outstanding balance was \$237. He has not made any payments toward his remaining consumer debts. He claimed he disputed SOR ¶ 1.k, but he did not provide documentation to corroborate his claim. (Tr. 41-57, 98, 100-101; AE A)

Applicant stated his past-due medical debt in SOR ¶ 1.I remains unpaid because of a dispute between TRICARE and his former health insurance provider about who is liable for this debt. This debt remains unpaid. (Tr. 51-52)

Applicant attributes his financial issues to insufficient income due to his periods of unemployment, becoming a single father after separating from his child's mother in 2017, and the nature of contract work. He did not know how to manage his finances and he was also financially irresponsible. He has not provided documentation to show he has paid or otherwise resolved any of his delinquent debts. (Tr. 26-27, 98-100, 107; GE 1, 3, 5-8)

As of the date of the hearing, Applicant's annual salary was approximately \$58,000. He also receives \$3,101 monthly in disability pay. He has never received financial counseling. He had also not yet filed his federal and state income tax returns for tax year 2023. He stated he had not yet done so because he did not know his "AGI number for last year," which he said he needed so he could submit his tax returns electronically. (Tr. 83) He acknowledged he has not utilized the option of mailing his necessary tax returns through the postal service. He understood his legal obligation to timely file his income tax returns. (Tr. 25-26, 76-84, 104)

Guideline E: Personal Conduct and Guideline J: Criminal Activity

Applicant was arrested and charged with grand theft in May 2007. He was 17 years old. While a cashier at a supermarket chain, he stole money by completing blank transactions, processing refunds, and then keeping the money. An officer handcuffed him and he was released to his mother. He recalled writing a letter to his mother and to the supermarket chain. He disclosed this information on his 2007 Standard Form 86, wherein he noted "Sanctions/Completed." (SOR ¶¶ 2.e, 3.a; Tr. 68-75, 84-91, 94-97, 104-107; GE 2-3)

In February 2012, Applicant received Non-Judicial Punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for fraudulently using the debit card of another service member, who was his then-roommate, to purchase pizza. The service member reported it upon learning Applicant used his credit card without his permission. Applicant stated that he and the other service member had previously used each other's credit cards to purchase food so he did not believe it was a big deal, and he intended to tell and repay that service member. He was found guilty, reduced in rank to E-3, forfeited \$1,980 in pay, received 45 days' restriction and extra duty, and six months suspended. (SOR ¶¶ 2.d, 3.a; Tr. 66-68; GE 1, 3)

In June 2017, Applicant received NJP under Article 15 of the UCMJ for providing false pull-up test results to a physical fitness monitor by stating he completed 17 when he only completed 10. Applicant stated that he reported he did 17 pull-ups because that was the number he misheard the sergeant who was monitoring the test told him he completed, as he was not counting himself, and the monitor corrected him and reported he had only done 10. He was reduced in rank from an E-3 to an E-2. (SOR ¶ 2.c; Tr. 64-66; GE 1, 3)

In addition to Applicant's 2020 conviction for theft of government property (SOR ¶¶ 1.a, 2.a, 3.a), as previously discussed, he falsified information during an August 30, 2022 interview with an authorized DOD investigator about his underlying conduct. He told the investigator that he misused a single credit card in his name for the purpose of building his credit, when in truth, he purposely misused multiple credit cards. When he adopted the report summarizing his background interview with his response to interrogatories, he certified that the report accurately reflected the information he told the investigator during the interview. He maintained at the hearing that he told the investigator everything about his underlying conduct, and he acknowledged he did not read the entire report when he certified it as accurate with his response to interrogatories. (SOR ¶ 2.b; Tr. 57-64, 91-98, 106-107; GE 1, 3-4)

Policies

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(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 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 Exec. Or. 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

Exec. Or. 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;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; 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 was convicted of misdemeanor theft of government property in November 2020. He has a history of not being able to pay his debts. He also failed to file his federal and state income tax return for tax year 2023. AG ¶¶ 19(a), 19(c), 19(d), and 19(f) 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;
- (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;
- (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.

Conditions beyond Applicant's control contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. SOR ¶ 1.i has been listed as paid on Applicant's August 2023 CBR, and he provided documentation reflecting he has made payments totaling \$474 to SOR ¶ 1.g. As such, I find those allegations in Applicant's favor under AG ¶ 20(b).

Applicant's conduct underlying his 2020 conviction raises questions about his judgment, trustworthiness, and reliability. Moreover, he continues to owe \$13,000 in court-ordered restitution. Although he provided documentation reflecting he made payments toward SOR ¶ 1.b through wage garnishment, he presented no plan to resolve the remaining balance of \$9,043. He has not made any payments toward his remaining debts. He did not provide documentation to corroborate his claim that he disputed SOR ¶ 1.k. He did not provide documentation to show that he has filed his federal and state income tax return for tax year 2023. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) do not apply except as noted above.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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;

(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;

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:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior; and

(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. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;

Applicant's conduct in SOR ¶ 1.a is cross alleged under Guideline E as SOR ¶ 2.a. I addressed that conduct, which is sufficient for an adverse determination, in my analysis under Guideline F, above. As such, AG ¶ 16(c) does not apply to SOR ¶ 2.a and I find that allegation in Applicant's favor.

Applicant falsified information during his 2022 background interview when he told the investigator that he misused a single credit card in his name for the purpose of building his credit, when in truth, he purposely misused multiple credit cards. AG ¶¶ 16(b) and 16(e)(1) apply to SOR ¶ 2.b.

Applicant also received NJP in 2017 for providing false pull-up test results to a physical fitness monitor and he received NJP in 2012 for fraudulently using the debit card of another service member. He was also arrested and charged with grand theft in May 2007. His conduct raises questions about his judgment, trustworthiness, and reliability. AG ¶¶ 16(d)(1) and 16(d)(2) apply to SOR ¶¶ 2.c-2.e.

AG ¶ 17 describes the following relevant conditions that could mitigate the personal conduct security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's pattern of engaging in fraudulent conduct from 2007 to as recently as 2022, when he lied to the background investigator regarding his conduct underlying his 2020 conviction, is not mitigated. He did not make prompt or good-faith efforts to correct his falsification to the background investigator, to include when he responded to the interrogatories. At the hearing, instead of taking responsibility for his falsification he maintained he had been candid with the investigator. The offenses are not minor, not enough time has passed, the behavior is not so infrequent, nor did it happen under such unique circumstances that it is unlikely to recur and continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a), 17(c), 17(d), and 17(e) do not apply to SOR ¶¶ 2.b-2.e.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct as: “[c]riminal activity creates doubt about a person'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. I considered the following disqualifying condition relevant:

- (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.

Applicant engaged in criminal activity in approximately 2007, 2012, and 2020. AG ¶ 31(b) is established.

AG ¶ 32 provides the following relevant mitigating conditions:

- (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.

Applicant's criminal involvement in 2007, 2012, and 2020 continues to raise doubts about his reliability, trustworthiness, and good judgment. He needs more time to show that his criminal conduct is a thing of his past. I find that not enough time has elapsed since Applicant's criminal behavior and without recurrence of criminal activity, and the record evidence continues to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 32(a) and 32(d) are not established.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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 eligibility and suitability for a security clearance. I conclude Applicant did not mitigate financial considerations, personal conduct, and 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.f: | Against Applicant |
| Subparagraph 1.g: | For Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | For Applicant |
| Subparagraphs 1.j-1.p: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a: | For Applicant |
| Subparagraphs 2.b-2.e: | Against Applicant |
| Paragraph 3, Guideline J: | AGAINST Applicant |
| Subparagraph 3.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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge