



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



Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2025

Decision

LOUGHREN, Edward W., Administrative Judge:

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

Statement of the Case

The Department of Defense (DOD) issued an undated Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on November 28, 2023, and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2024.

The hearing convened as scheduled on September 18, 2024. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since January 2023. He served on active duty in the U.S. military from 2008 until he was honorably discharged in 2016. He served in the Reserve/National Guard from 2017 to 2022. He is a high school graduate. He married in 2016 and divorced in 2020. He does not have children. (Transcript (Tr.) at 14-19; GE 1, 2)

Applicant had several jobs after he left active duty in the military. The dates of his employment and the reasons he left the jobs are not always clear. He was terminated from a job as a commercial truck driver in about May 2018 for safety issues after he had been in two accidents (SOR ¶ 1.e). (Tr. at 20-25; Applicant's response to SOR; GE 1, 2)

Applicant worked for a company during a period between 2017 and 2019. It is unclear whether he was terminated because he did not inform the company that he was terminated from a different employer; he left because he had surgery; other reasons; or some combination of the above reasons (SOR ¶ 1.d). He admitted that after he left the company, he attempted to go back and work for the company, but it would not rehire him. (Tr. at 25-34; Applicant's response to SOR; GE 1, 2)

Applicant was terminated from a job as a commercial truck driver in 2021 (or possibly 2017) for safety issues while driving (SOR ¶ 1.c). He stated that he violated the company's policy that only Bluetooth telephone calls could be made in the truck. He also stated that he had been in an accident. (Tr. at 34-38; Applicant's response to SOR; GE 1, 2)

Applicant left employment as a commercial truck driver by mutual agreement in about 2022 after he received a speeding ticket (SOR ¶ 1.b). He stated that the ticket was for going three miles per hour over the speed limit. (Tr. at 38-40; Applicant's response to SOR; GE 1, 2)

Applicant was terminated from a job as a commercial truck driver in 2022 after he was in an accident (SOR ¶ 1.a). He stated that the company told him they were putting the truck in to be repaired and would contact him after it was repaired. He stated that the company never contacted him and never informed him he was terminated. He is not a truck driver for his current employer (Tr. at 19, 40-43; Applicant's response to SOR; GE 1, 2)

The SOR alleged eight delinquent debts totaling about \$8,470. Applicant denied owing the debts alleged in SOR ¶¶ 2.a, 2.c, and 2.h. He admitted owing the remaining five debts. He attributed his financial problems to insufficient income and overspending. The debts are listed on one or more credit reports from November 2022, March 2023, November 2023, and September 2024. (Tr. at 46; Applicant's response to SOR; GE 2-6)

Applicant denied owing the \$198 telecommunications debt alleged in SOR ¶ 2.a. He stated that he never had a cell phone with that carrier. He stated that he has been disputing the account unsuccessfully for years. The debt is listed on all the credit reports in evidence. (Tr. at 47, 50-51; Applicant's response to SOR; GE 2-6)

Applicant admitted owing the consumer debts alleged in SOR ¶¶ 2.b (\$442), 2.e (\$3,093), and 2.g (\$747). (Tr. at 52-54; Applicant's response to SOR; GE 2-6)

Applicant denied owing the \$224 debt (SOR ¶ 2.c) to the Defense Finance and Accounting Service (DFAS). He stated that he did not know why DFAS reported that he owed the debt. He stated that he sent letters to DFAS about the debt, but he never received a response. The debt is listed on all the credit reports in evidence. (Applicant's response to SOR; GE 2-6)

Applicant admitted owing the \$2,767 collection account for a military credit card that is accepted at exchanges and commissaries (SOR ¶ 2.d). He stated that he paid the debt through a garnishment. That statement is supported by the March 2024 credit report that showed the balance was reduced to \$409. (Tr. at 47-49, 54; Applicant's response to SOR; GE 2-6)

SOR ¶ 2.f alleged an \$806 delinquent debt to a collection company on behalf of a satellite television provider. Applicant admitted the SOR allegation with the comment that he "forgot about [it]." When he was interviewed for his background investigation in May 2023, he stated that he had an account with the provider, but it was paid. He stated that he disputed the account. He told the investigator that he was unwilling to pay the debt, because it was in error. The debt was reported by Experian and TransUnion on the November 2022 and March 2023 combined credit reports. It is not listed on the November 2023 Equifax credit report or the September 2024 Experian credit report. (Tr. at 47; Applicant's response to SOR; GE 2-6)

Applicant denied owing the \$196 debt to one of his former employers (SOR ¶ 2.h). He stated that he could not understand how he could owe the employer when they withheld his last paycheck. The debt was reported by Equifax on the credit reports from November 2022, March 2023, and November 2023. It is not listed on the September 2024 Experian credit report. (Applicant's response to SOR; GE 2-6)

Applicant did not document any voluntary payments to his creditors. He stated that his finances are stable. He has not yet filed his state and federal income tax returns for tax year 2022. He owes the IRS about \$3,000 for tax year 2023. He believes that when he files his federal income tax return for 2024, he will be due a refund, which will be withheld to pay his back taxes. Tax problems were not alleged in the SOR and cannot be used for disqualification purposes but may be considered when determining the applicability of mitigating conditions and in the whole-person analysis. He has not received financial counseling. (Tr. at 19, 56-58; GE 2-6)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2023. He did not report his employment issues or his delinquent debts under the

pertinent questions. Applicant denied intentionally providing false information on the SF 86. He stated that he rushed through the SF 86; he was not good with dates; he mixed up some of his employers; he forgot about some of the matters; he did not look at his credit report before submitting the SF 86; and he misunderstood some of the questions. (Tr. at 21-22, 33-40, 44-45, 49-56, 64; Applicant's response to SOR; GE 1, 2) After considering all the evidence, including Applicant's age, education, experience, demeanor, and testimony, I do not find by substantial evidence that he intentionally provided false information on the SF 86. I found Applicant to be essentially honest, but unsophisticated and ignorant about the matters.

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 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 is potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial problems and delinquent debts. The above disqualifying conditions are applicable.

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; 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.

Applicant attributed his financial problems to insufficient income and overspending. The insufficient income could be related to losing jobs, which were mostly due to his actions. His financial problems were not due to conditions that were largely beyond his control. AG ¶ 20(b) is not applicable.

Applicant denied owing the debts alleged in SOR ¶¶ 2.a, 2.c, and 2.h. The debts alleged in SOR ¶¶ 2.a and 2.h total less than \$400. I am crediting him with mitigating those two debts. The \$224 debt alleged in SOR ¶ 2.c is to DFAS. He stated that he sent letters to DFAS about the debt, but he never received a response. He did not provide any documentation on the debt, which is listed on all the credit reports in evidence. AG ¶ 20(e) is not applicable to that debt.

Applicant did not document any voluntary payments to his creditors. The \$2,767 collection account for a military credit card (SOR ¶ 2.d) was paid through garnishment. However, court-ordered or other involuntary means of debt resolution, such as garnishment, are entitled to less weight than means initiated and carried through by the debtor himself. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Additionally, he has not yet filed his state and federal income tax returns for tax year 2022, and he owes the IRS about \$3,000 for tax year 2023.

Applicant does not have a track record that would enable me to trust that he will pay his debts. There is insufficient evidence for a determination that his financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. None of the above mitigating conditions are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes.

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

(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;

(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;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; 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.

As indicated in the Findings of Fact, I do not find by substantial evidence that Applicant intentionally provided false information on his SF 86. AG ¶ 16(a) is not applicable. SOR ¶¶ 1.f and 1.g are concluded for Applicant.

Applicant was terminated from several jobs as a commercial truck driver because of performance or safe-driving issues. His conduct raises security concerns under AG ¶¶ 16(d) and 16(e).

AG ¶ 17 provides conditions that could mitigate security concerns. The following 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
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's conduct was mostly related to driving. It is possible that Applicant was a poor driver or just unlucky. He is no longer a commercial truck driver. The conduct does not cast doubt on his current reliability, trustworthiness, or good judgment. The above mitigating conditions are applicable, and personal conduct security concerns are 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 E and F in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct security concerns, but he did not mitigate the financial considerations 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 E:	For Applicant
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.g:	Against Applicant
Subparagraph 2.h:	For 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.

Edward W. Loughran
Administrative Judge