



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



In the matter of:)
)
) ISCR Case No. 19-01240
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Mark A. Myers, Esq.

March 10, 2020

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has mitigated the security concerns related to his family connections in the Philippines and his delinquent debts. He did not falsify a DOD questionnaire as alleged. His request for national security eligibility and access to classified information is granted.

Statement of the Case

On May 21, 2019 the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under guidelines B, F, and E. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective for all adjudicative decisions on or after June 8, 2017.

On July 12, 2019, Applicant answered the SOR and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On September 13, 2019, the case was initially assigned to another administrative judge, and on November 8, 2019, it was reassigned to a second administrative judge. On November 26, 2019, the case was reassigned to me. On November 19, 2019, DOHA issued a notice scheduling the hearing on January 9, 2020.

I convened the hearing as scheduled. Department Counsel offered seven documents, which she marked as Government Exhibits (GE) 1 - 7. She also presented a written request that I take administrative notice of certain facts about the country conditions in the Republic of the Philippines (the Philippines). I marked Department Counsel's Exhibit List as Hearing Exhibit I and the Government's Request for Administrative Notice as Hearing Exhibit II.

Applicant attached six exhibits to his SOR answer, which he marked as Applicant's Exhibit (AE) A through F. Applicant testified. I left the record open until January 17, 2020, for Applicant to submit additional documentation. On January 15, 2020, Applicant's law firm submitted four additional exhibits, which I have marked as AE G through J. I marked the correspondence from the office of the Applicant's law firm as Hearing Exhibit III.

All exhibits were admitted into the record without objection. On January 21, 2020, DOHA received the transcript (Tr.).

Request for Administrative Notice

Applicant did not object to Department Counsel's Request for Administrative Notice of certain facts about the country conditions in the Philippines. I have taken administrative notice of the certain facts that are supported by source documents, which are official U.S. Government publications. These facts are summarized in the Findings of Fact, below.

Findings of Fact

Applicant's personal information is extracted from his June 27, 2018 security clearance application (SCA), unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence, I make the following findings of fact:

Guideline B, Foreign Preference

Applicant (57) was born in the Philippines. He entered the United States with his parents in 1983 at the age of 19. He served in the U.S. Marine Corps from 1984 to 2004, and retired as a staff sergeant (pay grade E-6), with 20 years of honorable service. While serving in the Marine Corps, he was deployed overseas several times. He married in 1984. His wife was also born in the Philippines and immigrated to the United States.

Applicant became a U.S. citizen in 1993. His wife is also a naturalized U.S. citizen. (AE B; Tr. at 49.)

Applicant and his wife have three adult children. The children were born in the Philippines and are naturalized U.S. citizens. Applicant has an older brother and an older sister, who are citizens and residents of the Philippines. In his SOR answer, Applicant wrote that his contacts with his foreign family members are not frequent. He testified that he speaks with his siblings during holidays and on other occasions, totaling three or four times a year. He also testified that he “seldom” speaks with his mother-in-law, perhaps two or three times a year. He was last in the Philippines in 2003 when his father died. Applicant returned his father’s remains to the Philippines for burial. Neither his siblings nor his mother-in-law have ever visited him and his family in the United States. (SOR answer at 2-3; AE B; Tr. at 25-27, 30, 49, 52-53.)

Applicant’s brother works in the Philippines as a traffic officer. His sister is a retired psychologist. His relatives in the Philippines are poor. They have no knowledge about Applicant’s employment history and current status, except that he is a retired Marine. (Tr. at 29-31.)

Guideline F, Financial Considerations

Applicant earned an associate’s degree in 2006 and a bachelor’s degree in 2013. Since his discharge from the Marine Corps in 2004, Applicant has been employed by federal contractors with three periods of unemployment, specifically from July to November 2009, December 2014 to May 2016, and October 2017 to June 2018. Altogether, he experienced about 28 months of unemployment since December 2014. Each period of unemployment began with the expiration of the government contract on which he was working. During the period April 2013 through November 2013, he was deployed to a war zone by his employer, a major U.S. Government contractor. He was rehired by that contractor in April 2019 to work as a logistics support representative. Starting with his years serving in the Marine Corps, he has worked for 35 years in the field of logistics. While serving in the Marine Corps, Applicant was granted a security clearance in 1993. His clearance was renewed in 2010. (Tr. at 19-22.)

In late 2013, Applicant began to experience financial difficulties when he was working in a war zone. Pursuant to a change in U.S Government policy, he and many others were ordered to return from the war zone prematurely. Applicant was subsequently laid off. He was highly paid for his work in the war zone. Upon his return to the United States, he incurred significant tax liabilities due to his loss of the favorable tax rules available to U.S. taxpayers who live and work outside of the United States. This resulted in unanticipated taxes, which aggravated his financial distress from his loss of employment. At the time Applicant applied for a security clearance in June 2018 after another period of unemployment, he had a number of delinquent accounts, some of which had been placed for collections. (Tr. at 31-33.)

SOR ¶¶ 2.a – 2.c, Three Student Loans Placed for Collection in the Total Amount of \$25,325 – Applicant has outstanding student loans for his daughter’s education and for his more recent education. He claimed in his SOR answer that he has made payments and is “no longer delinquent.” He is presently paying about \$800 each month directly out of his paycheck, as evidenced by the two leave and earning statements he submitted into the record. These loans will be fully repaid in two or three years. These debts are being resolved. (AE F; AE G; AE H; Tr. at 35-36, 63.)

SOR ¶¶ 2.d, 2.f, 2.g, 2.h., Credit Card Accounts Placed for Collection or Charged-Off in the Total Amount of \$5,893 - The debt alleged in SOR ¶ 2.d (\$3,715) is for a credit card account opened in December 2013. Applicant wrote in his SOR answer that he learned about this collection account when he returned from his deployment in a war zone in November 2013. He testified that he tried to reach the bank when he returned from the war zone and learned that the debt had been transferred to a collection agency. He never heard anything further about this account. Applicant intends to pay his outstanding debts pursuant to a plan discussed below. This debt will be resolved pursuant to his repayment plan. (GE 3 at 2; GE 7 at 2-3; Tr. at 35-37.)

The credit-card debts alleged in SOR ¶ 2.f (\$1,224) and ¶ 2.g (\$1,098) are the same debt owed to the same bank. The debt is listed twice in Applicant’s credit reports and in the SOR because the bank changed its name. Applicant has made payments on this debt. Applicant Exhibit J, dated August 26, 2019, evidences five payments on the account of \$100 each. This debt is being resolved or has already been resolved. (GE 2; AE J; Tr. at 37-38, 56-57, 66.)

The credit-card account alleged in SOR ¶ 2.h (\$1,080) was opened in December 2013 and became delinquent about a year later. Applicant testified that he contacted the creditor and was advised that the debt was charged off and would be treated as income to Applicant for tax purposes. He believes that he included this debt as income on his tax returns and owes nothing further. This debt will be resolved pursuant to his repayment plan. (Tr. at 38-40.)

SOR ¶ 2.e, Consumer Retail Account Placed for Collection in the Amount of \$1,576 – This debt was transferred to a collection agency. The agency obtained a judgment against Applicant in October 2017. Applicant never received any correspondence or court papers from the creditor, either before the judgment or after. This debt will be resolved pursuant to his repayment plan. (GE 2; Tr. at 37.)

SOR ¶ 2.i, Consumer Retail Account Charged-Off in the Amount of \$553 – This account was opened in 2012. Applicant defaulted on the payment of this account in about June 2015. Applicant testified that he is unfamiliar with this debt. This debt will be resolved pursuant to his repayment plan. (GE 3 at 2; Tr. at 40.)

SOR ¶ 2.j, Account Placed for Collection in the Amount of \$1,295 – Government Exhibit 4 established this collection debt. Applicant testified that he is unfamiliar with this debt. This debt will be resolved pursuant to his repayment plan. (GE 4 at 6; Tr. at 42.)

After his background interview, Applicant called his creditors, but he learned that they no longer owned the accounts. He could not figure out which company was the correct owner of his debt, and which the legal creditor. Applicant testified that he has sought advice from a financial counselor who has created a repayment plan to address the unresolved debts in the SOR. Applicant has decided to delay implementing the plan until he knows whether he has been granted a security clearance before he commits to repaying his debts. He is concerned that if his application is denied, he will lose his employment and be unable to honor his commitment to repay his creditors. He also wants to preserve the available income from his wife's employment and his military retirement to pay his mortgage and car payment should he become unemployed again. He credibly testified that if his clearance was granted, he would begin making the payments pursuant to the counselor's repayment plan. Applicant's attorney represented that he possessed a single copy of the plan, which he would submit after the hearing. The plan was not included in the post-hearing submission by Applicant's law firm. I note that his attorney separated from that law firm shortly after the hearing and before the post-hearing submission was made. (Tr. at 40-42, 65, 72, 79.)

Guideline E, Personal Conduct

In his SOR answer, Applicant responded to the falsification allegation in SOR ¶ 3.a by writing that he did not understand the question involved. He noted that English is not his native language. Also, he was unaware that he had any delinquent debts. At the hearing, he clarified that the main reason for his incorrect response to the financial question in the SCA was that he thought he had no delinquent debts. His wife played the major role in paying household bills. He first learned about the debts during his background interview. He then checked his credit for the first time. He credibly denied that he intentionally provided a false answer. (SOR answer at 8; Tr. at 42-43, 62, 65-72, 78.)

The Philippines

The U.S. Department of State warns U.S. citizens to exercise increased caution when traveling to the Philippines due to crime, terrorism, and civil unrest. The State Department advises that there is considerable risk of terrorism in the country. Terrorist organizations and criminal gangs operate throughout the country. Some groups are allied with the Islamic State of Iraq and Al-Sham, also known as ISIS. The organizations and gangs conduct bombing attacks and kidnappings against foreigners, civilians, government institutions, and security forces.

There are significant human rights problems in the Philippines, including unlawful and arbitrary killings by security forces, vigilantes, and insurgents. Other human rights concerns raised by actions of government representatives include forced disappearances, torture, arbitrary detention, harsh and life-threatening prison conditions, political detentions, killings and threats against journalists, official corruption, and abuse of power. Law enforcement agencies are engaged in a nationwide counter-narcotics campaign that has resulted in a sharp increase in violence between police and individuals suspected of involvement in the drug trade.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition,

and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline B, Foreign Influence

The security concern under this guideline is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Applicant’s admissions in his SOR response, in his testimony, and the documentary evidence in the record, potentially establish the following disqualifying conditions under this guideline:

AG ¶ 7(a): contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

AG ¶ 7(b): connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

AG ¶ 7(e): shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

AG ¶¶ 7(a) and 7(e) require evidence of a “heightened risk.” The “heightened risk” necessary to raise these disqualifying conditions is a relatively low standard. “Heightened risk” denotes a risk greater than the normal risk inherent in having a family member living under a foreign government. The totality of Applicant’s family ties to a foreign country as well as each individual family tie must be considered.

Applicant’s brother and sister and his mother-in-law are citizens and residents of the Philippines. Applicant and his wife have ties of affection to each of them. He maintains contact with these relatives, and his wife maintains contact with her mother.

The mere possession of a close personal relationship with a person, who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence or a conflict of interest and could potentially result in the compromise of classified information.

The nature of a nation’s government, the general conditions under which the citizens and residents of that country live, and the human-rights record of the country’s government are relevant in assessing the likelihood that an applicant’s family members are vulnerable to government coercion or inducement. The risk of coercion, persuasion, or duress is significantly greater if the foreign country has an authoritarian government; the government ignores the rule of law including widely accepted civil liberties; a family member is associated with or dependent upon the government; the government is engaged in a counterinsurgency actions; terrorists cause a substantial amount of death or property damage; or the country is known to conduct intelligence collection operations against the United States. The country conditions in the Philippines place a significant, but not insurmountable, burden of persuasion on Applicant to demonstrate that his relationships with his family members living in that country do not pose a security risk to the United States. Applicant should not be placed a position where he might be forced to choose between his loyalty to the United States and a desire to assist a relative living in the Philippines.

While there is no evidence in the record that intelligence operatives or terrorists from the Philippines seek or have sought classified or economic information from or through Applicant or his family, nevertheless, it is not prudent to rule out such a possibility in the future. International terrorist groups are known to conduct intelligence activities as effectively as capable state intelligence services, and the Philippines has a serious problem with terrorism. Applicant’s relationships with relatives living in the Philippines create a potential conflict of interest because terrorists could place pressure on his family living there in an effort to cause Applicant to compromise classified information. These relationships create “a heightened risk of foreign inducement, manipulation, pressure, or coercion” under AG ¶ 7. Substantial evidence was produced of Applicant’s contacts with family in the Philippines and has raised issues of a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion and the potential for a conflict of interest. AG ¶¶ 7(a), 7(b), and 7(e) apply to SOR ¶¶ 1.a and 1.b.

The following mitigating conditions are potentially applicable:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant has not established mitigation under AG ¶ 8(a). The nature of his relationships with his relatives in the Philippines, as alleged in the SOR, especially his relationship with his brother who is employed by the government in a law enforcement capacity, preclude a conclusion that it is unlikely that Applicant will be placed in a position of having to choose between the interests of his foreign relatives and the interests of the United States.

Mitigation under AG ¶ 8(b), however, has been fully established. Applicant has such deep and longstanding relationships and loyalties in the United States that he can be expected to resolve any conflict of interest in favor of the U.S. interest. Applicant honorably served in the Marine Corps for 20 years. He joined the Marines before he even became a U.S. citizen. He has worked for U.S. Government contractors since his retirement from the Marines. Altogether, he has been providing critical logistical support for the U.S. warfighter for 35 years. Having immigrated to this country at the age of 19, he has lived most of his adult life in this country. In addition, his wife and children are naturalized U.S. citizens. His wife has lived in the United States most of her adult life and the children of Applicant and his wife have lived in this country most of their lives. Also, Applicant's sense of loyalty or obligation to his foreign relatives and to the Philippines as a country and its government is so minimal that no conflict of interest exists.

AG ¶ 8(c) is also established. Applicant's contacts and communications with his relatives is casual and infrequent so as to create little likelihood that those relationships could create a risk of foreign influence or exploitation. He has not visited his family in the Philippines since 2003, and then he only went there to bury his deceased father.

Security concerns alleged in the SOR under Guideline B are resolved in favor of Applicant. Accordingly, paragraph 1 of the SOR is found for him.

Guideline F, Financial Considerations

The security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's admissions in his SOR response, his testimony, and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline for the eleven SOR allegations:

AG ¶ 19(a): inability to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

The following mitigating conditions are potentially applicable:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

All of the above mitigating conditions apply. Applicant's debts became delinquent due to the unusual circumstance of his prolonged periods of unemployment, totaling 28 months over the last five years. He is hopeful that his current employment will continue uninterrupted without any further breaks due to contract expirations. It is unlikely that he will incur any significant, additional delinquent debt should he become unemployed in the future since he has learned that he must stay in close contact with his creditors and work out repayment plans in the event of a loss of income. In any event, his behavior does not cast doubt upon his current reliability, trustworthiness, and good judgment.

Applicant has established that his delinquencies were due to circumstances beyond his control. He has provided significant evidence that he has acted responsibly under the circumstances. He presently is repaying his most significant debts both from the standpoint of security significance and size. The student loan debts owed to the U.S Government alleged in SOR ¶¶ 2.a through 2.c total \$25,325. He is paying about \$800 per month on these debts through a payroll deduction. The loans will be repaid in less than three years. Applicant also established that he has paid a fourth debt (SOR ¶ 2.f), which is a duplicate of the debt alleged in SOR ¶ 2.g.

The five remaining debts alleged in the SOR (SOR ¶¶ 2.d, 2.e, 2.h, 2.i, and 2.j) total about \$8,200. While this is not a small amount, the adjudicative guidelines do not require that an applicant be debt free. The Appeal Board has established the following basic guidance for adjudications in cases such as this:

[A]n applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which the applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payments of such debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotations omitted).

When considering the entirety of Applicant's financial situation, his extensive, recent history of unemployment, and his actions, I view that Applicant has acted reasonably. He is initially resolving his three federal debts for student loans and a fourth debt owed to a bank. He has initiated a good-faith effort to resolve his debts.

Applicant has taken a pragmatic approach to the repayment of the five other debts alleged in the SOR. He has organized a plan of action with a professional counselor. The

cautious timing for implementing the plan obviously is the result of his experiences of dealing with the hardships of losing his employment in the past. He intends to commence payments under the plan if his security clearance is renewed and he is permitted to continue working for his government contractor. His total outstanding debts is a relatively small amount. It will not take long for him to repay these debts under his plan.

Security concerns alleged in the SOR under Guideline F are resolved in favor of Applicant. Accordingly, paragraph 2 of the SOR is found for him.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The following potentially disqualifying condition under this guideline is implicated by the SOR allegations under this adjudicative guideline:

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

The Government has the initial burden of establishing by substantial evidence that Applicant intentionally omitted potentially derogatory information about his delinquent debts from the SCA. Throughout his 20 years in the Marine Corps, Applicant was often deployed and away from home. His wife ran their household, raised their children, and paid their bills. He was aware of the student loans and a bank debt and believed they were being paid in a timely manner. At the time he prepared the SCA, he had no knowledge that they were delinquent. He also did not know about the other accounts.

Of course, it is desirable that applicants for security clearances have a firm grasp of their financial obligations, and when faced with unemployment, take affirmative steps to deal with their creditors. But that ideal is not everyone's reality. Applicant should have known more about his delinquent obligations when he prepared the SCA. He should have discussed his financial obligations with his wife and reviewed a credit report, but he did not do so. Applicant prepared the SCA with the limited information he possessed, and his disclosure about his finances were incorrect. He credibly testified that he did not intentionally omit his delinquent debts from the SCA. I conclude that the record does not

contain substantial evidence that Applicant intentionally provided false information in the SCA.

Security concerns alleged in the SOR under Guideline E are resolved in favor of Applicant. Accordingly, paragraph 3 of the SOR is found for him.

Whole-Person Analysis

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d). These factors are:

- (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.

I have incorporated my comments under Guidelines B, F, and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. I have heavily weighed Applicant's 20 years of honorable service in the Marine Corps. I have also weighed his additional 15 years providing logistical support to the U.S. military as a contractor. His work throughout his adult life has been in service of the United States. As part of his employment as a contractor, he has had the unfortunate experience of losing his job when his employers' contracts with DOD terminated. His 28 months of unemployment over the last five years had a significant impact of his life. He has an excellent position at this time. He has earned the right to show that he can promptly repay his outstanding debts pursuant to his counselor's repayment plan. Moreover, Applicant is an honorable man with much integrity and pride. He would not mislead the U.S. Government or do any damage to this country, his adopted country, which he has served for so many years.

After weighing the disqualifying and mitigating conditions under Guidelines B, F, and E, and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by the allegations in the SOR.

Formal Findings

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a through 2.j:	For Applicant
Paragraph 3, Personal Conduct:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

John Bayard Glendon
Administrative Judge