



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



In the matter of:)
)
) ISCR Case No. 19-02971
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: Theodore Sweet, Personal Representative

12/28/2020

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations, criminal conduct, and personal conduct. Eligibility for a security clearance is granted.

Statement of the Case

On June 21, 2017, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to those interrogatories on October 7, 2019. On November 21, 2019, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (AG) (December 10, 2016), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct), and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant's first Answer to the SOR, dated December 27, 2019 (First Answer), was rejected because he failed to specifically admit or deny each allegation. In a notarized statement, dated March 24, 2020 (Second Answer), Applicant again responded to the SOR, and he requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on May 16, 2020. The case was assigned to me on July 14, 2020. A Notice of Hearing was issued on August 19, 2020. I convened the hearing as scheduled on September 24, 2020.

During the hearing, Government Exhibits (GE) 1 through GE 13, and Applicant Exhibits (AE) A through AE AB were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on October 19, 2020. I kept the record open until October 23, 2020, to enable him to supplement it. He took advantage of that opportunity and timely submitted numerous documents, many of which were duplicates of documents already in evidence. The new documents were marked and admitted as AE AC through AE BA without objection. The record closed on September 23, 2020.

Findings of Fact

In his response to the SOR, Applicant admitted, with comments, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.j.), criminal conduct (SOR ¶¶ 2.a. through 2.t.), and personal conduct (SOR ¶ 3.a.). Department Counsel moved to amend the SOR essentially by moving subparagraph 2.a. to new subparagraph 3.b. The motion was granted over Applicant's objection. (Tr. at 18-20) Applicant's admissions and his comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 55-year-old employee of a defense contractor. He has been serving as a senior network engineer since July 2019. He previously held a variety of positions (network engineer, development network engineer, deployment network engineer, information management senior specialist, and senior network engineer) with different employers since early 2003. He has received an offer from a new employer for a position of senior network engineer with a starting annual salary of \$160,000. (AE AT) He is a 1983 high school graduate. He enlisted in the US. Army in October 1984, and served on active duty until April 1987, when he was discharged with a general discharge under honorable conditions for unsatisfactory performance. Although he was denied a secret clearance on two occasions, he was granted a secret clearance on one occasion. He has never been married. He has two children, born in 1988 and 1989.

Military Awards and Decorations

During his period of active duty, Applicant received the Army Service Ribbon, the Overseas Service Ribbon, the Army Achievement Medal, the Marksman Ribbon-M16, and Hand Grenade Expert. (AE J)

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (SF 86, dated June 21, 2017); GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 2, 2017); GE 6 (Equifax Credit Report, dated October 3, 2019); GE 7 (Equifax Credit Report, dated August 19, 2020); GE 8 (Statement, dated February 23, 2004); GE 13 (Response to Interrogatories, dated October 7, 2019); and Applicant's Answers to SOR, dated December 27, 2019, and March 24, 2020.

In his SF 86, Applicant acknowledged having one delinquent account that he claimed that he had never opened. He denied having any other delinquent accounts within the past seven years. When he was interviewed by an investigator from the US Office of Personnel Management (OPM) in June 2016, he acknowledged the one account listed in his SF 86, as well as some medical bills that his health insurance should have paid. Even after being confronted, he denied knowing anything about nearly a dozen other delinquent accounts. In November 2017, while again being questioned by an OPM investigator, he acknowledged the medical bills as well as two other delinquent accounts. During a June 2018 OPM interview, he added several additional delinquents to the discussion.

Applicant has experienced periodic financial difficulties at least since early 2004 when he had an automobile involuntarily repossessed after he lost a job and was unable to pay his bills. (GE 13, at 16) In February 2004, he reported that he had six delinquent accounts totaling over \$9,000. (GE 8 (Personal Financial Statement)) In addition, he attributed some of his financial problems to having to make \$1,700 in monthly child-support payments. Although he experienced a number of short-term periods of unemployment between positions, he did not focus on any specific factors that rendered him unable to maintain his accounts in a current status. He offered no evidence of ever receiving financial counseling. Instead, aside for a few delinquent accounts that were apparently addressed by him prior to the issuance of the SOR in November 2019, as well as those described below, commencing in June 2020, he engaged the services of a credit-repair firm, and they disputed a variety of accounts without specifying the basis for the disputes. (AE M) He terminated his relationship with the firm and started addressing his creditors individually by himself.

The SOR alleged ten delinquent accounts totaling approximately \$25,165, set forth as follows:

SOR ¶ 1.a.: There is an income tax lien in the amount of \$3,214 that was filed against him in December 2018. (GE 2) The lien resulted in confusion over income as an

independent contractor under a Form 1099, without withholding. When the issue was brought to his attention, he established a repayment plan with the Internal Revenue Service (IRS), but failed to do so separately with the local government. (Tr. at 84-86) In June 2020, seven months after the SOR was issued, Appellant and the office of tax and revenue established an Installment Agreement under which Applicant agreed to start to make monthly payments in the amount of \$35.17 on August 1, 2020, and every month thereafter until the tax liability is paid in full. He submitted documentation to confirm that he has been in compliance with the Installment Agreement. (AE T; AE AR) The account is in the process of being resolved.

SOR ¶ 1.b.: There are condominium association assessments for the period January 1, 2018, through October 3, 2019, totaling \$7,619. (GE 13, at 13-16) After he was sued, but before the trial date, in October 2019, Applicant and the creditor agreed to a Settlement Agreement under which he agreed to make a lump-sum payment of \$3,000 on or before October 31, 2019. He made that payment on the due date. (AE F; AE AG) The account has been resolved.

SOR ¶ 1.c.: There is a medical account with an unpaid balance of \$108 that was placed for collection. (GE 6, at 1; GE 7, at 2) In April 2020, Applicant and the collection agent agreed that Applicant would deposit a post-dated check for the unpaid balance plus a \$10 fee on or by April 10, 2020. He actually paid the agreed amount on May 29, 2020, six months after the SOR was issued. (AE AF; AE S) The account has been resolved.

SOR ¶ 1.d.: There is a medical account with an unpaid balance of \$561 that was placed for collection. (GE 6, at 2) Applicant paid the collection agent on October 5, 2020, 11 months after the SOR was issued, and over a week after the hearing took place. (AE AA; AE AJ; AE AL) The account has been resolved.

SOR ¶ 1.e.: There is a medical account with an unpaid balance of \$1,129 that was placed for collection. (GE 6, at 2) In August 2020, nine months after the SOR was issued, Applicant and the collection agent agreed to a repayment plan under which he would make a \$20 payment on August 21, 2020, and every month thereafter he would make two preauthorized recurring \$20 payments until the outstanding balance is satisfied in July 2021. (AE R; AE AH; AE AI) The account is in the process of being resolved.

SOR ¶ 1.f.: There is a credit-card account with an unpaid balance of \$4,773 that was charged off. (GE 6, at 3; GE 7, at 4; GE 5, 7; AE AM) In September 2020, ten months after the SOR was issued, Applicant and the creditor agreed to a repayment plan under which, starting on the 18th of each month, he would make a \$20 payment until the account is paid in full. (AE AM) He submitted documentation indicating that the initial payment was made on September 18, 2020, one week before the hearing. (AE AN) The account is in the process of being resolved.

SOR ¶ 1.g.: There is a credit-card account with an unpaid balance of \$2,503 that was charged off, (GE 6, at 3; GE 7, at 4) In July 2020, eight months after the SOR was issued, Applicant and the collection agent agreed to a repayment plan under which, starting on October 2, 2020, he would make monthly payments of \$50 until the account

is paid in full. (AE Q; AE AS; AE AZ) The account is in the very early process of being resolved.

SOR ¶ 1.h.: There is a furniture-store charge account with an unpaid balance of \$2,085 that was placed for collection. (GE 6, at 3; GE 7, at 4) After he was sued, but before the trial date, in February 2020, Applicant and the collection agent agreed to a Settlement Agreement under which they agreed to settle the account with a lump-sum payment of \$1,220 to be made by March 5, 2020. That payment was made in February 2020, and the collection agent considered the account to be settled in full. (AE H; AE L) The account has been resolved.

SOR ¶ 1.i.: There is a credit-card account with an unpaid balance of \$1,661 that was placed for collection. (GE 6, at 4-5; GE 7, at 5) After he was sued, but before the trial date, in September 2020, Applicant and the collection agent agreed to a Settlement Agreement under which they agreed to settle the account with a lump-sum payment of \$1,330 to be made by September 18, 2020. Applicant submitted a Notice of Dismissal, dated September 22, 2020, indicating that the lawsuit had been dismissed as paid and satisfied. (AE C; AE O; AE AE) The account has been resolved.

SOR ¶ 1.j.: There is a clothing-store charge account with an unpaid balance of \$512 that was charged off. (GE 6, at 4; GE 7, at 3; GE 5, at 8) Applicant made a payment of \$384 in settlement of the account on May 29, 2020. (AE AO; AE AQ). The account has been resolved.

In addition to the SOR debts discussed above, Applicant had delinquent accounts with other creditors, most of which he started to resolve in 2020. (AE K; AE N; AE P; AE U; AE AY)

As noted above, Applicant has received an offer from a new employer for a position of senior network engineer with a starting annual salary of \$160,000. That would increase his annual salary substantially from his current \$133,900 annual salary. Prior to the hearing, he reported his net monthly income from his current employer is approximately \$6,682, and his anticipated net monthly income from his new employer would be \$9,357. After his routine monthly expenses and pre-hearing debt payments, he anticipated having a monthly remainder of approximately \$4,836 that might be available for discretionary spending or savings. (AE AX; AE AY) The actual remainder should be increased because he was still reporting anticipated payments that he had already made for accounts that have already been paid off. In addition, Applicant has applied to the U.S. Department of Veterans Affairs for disability compensation. (AE A; AE B; AE AB; AE BA; AE D) As of the closing of the record, no final decision on his application had been made.

Criminal Conduct and Personal Conduct

When he was a child – from the third grade through the tenth grade – Applicant experienced behavioral problems, including fighting and stealing, and as a result, his father required that he receive counseling two to three times per week. (GE 8, at 4) Some of that behavior continued, for Applicant has a lengthy history of criminal conduct and

questionable personal behavior, during which he exhibited something other than peaceful activity, that he was angry, and was either offensively or defensively violent, commencing in March 1986 while he was on active duty, when he was about 20 years old, and continuing through at least June 2015. Included in that history are various incidents that resulted in various arrests for misdemeanors and felonies, the issuance of peace orders (similar to a protection order), violations of military standards and requirements, court decisions, and military disciplinary actions. His actions while on active duty are not individually alleged in the SOR. There are a number of post-discharge convictions, several charges were dismissed or otherwise not prosecuted, and the final disposition is not known for some of the incidents. The incidents and their eventual results, are listed below:

SOR ¶ 3.b.: Applicant received a general discharge under honorable conditions from the U.S. Army in April 1987 for unsatisfactory performance, essentially for a variety of military violations during 1986-87. (AE J; GE 13 (Enhanced Subject Interview, dated June 1, 2016, at 6-7)) When questioned about his discharge by a Special Agent from the Defense Security Service in 2004, Applicant characterized his discharge basis as “unable to perform” because he was struck in the head with a baseball bat during a fight, fracturing his skull, and he was thereafter unable to perform his military duties. (GE 13 (Statement, dated February 23, 2004, at 4)) He later explained that he was young and did not understand life. He conceded that he was disrespectful at times, and had numerous fights. (GE 13 (Enhanced Subject Interview, dated November 3, 2017, at 9))

SOR ¶ 2.b.: In April or May 1988, he was arrested for simple assault, a misdemeanor, but the prosecutor declined to file a charge, and the matter was apparently dismissed when it was “non-papered.” (GE 10; AE E; GE 13 (Enhanced Subject Interview, dated June 1, 2016, at 16))

SOR ¶ 2.c.: In February 1989, he was arrested and charged with battery, a misdemeanor, when he was in a fist fight with his father. He explained that he had previously been abused as a child, and he became very angry with him. His father reported the incident to authorities. Although he contended that he was not prosecuted, he was, in fact, released on a bail bond, and placed on probation before judgment. (GE 9, at 9; GE 8, at 2)

SOR ¶ 2.d.: In October 1990, he was arrested and charged with battery and malicious destruction of property (with a value less than \$300), both misdemeanors, when he grabbed a female friend’s arm too hard. The “victim” had broken the lock on Applicant’s sister’s automobile, so he grabbed her arm. Both charges were dismissed *nolle prosequi*. (Tr. at 65; GE 9, at 4, 9; GE 8, at 2)

SOR ¶ 2.e.: In February 1992, he was arrested and charged with assault with a deadly weapon – a shod foot. He had met a former girlfriend at a club, but he chose to give her the cold shoulder and she became confrontational. She purportedly pushed him through a set of double doors, so he departed without further interaction. He went to a nearby fast-food restaurant, and she showed up there as well. Talking resulted in another argument, and then to another physical incident when she struck him, and he retaliated.

He kicked her with his shod foot. The charge was reduced to simple assault, to which he entered a plea of guilty. He was sentenced to one year of supervised probation, and ordered to serve 90 hours of community service. (Tr. at 70-72; GE 8, at 3; AE 9, at 4; GE 10, at 2)

SOR ¶ 2.f.: In July 1993, he was arrested and charged with stalking, a misdemeanor. The charge was dismissed *nolle prosequi*. No other information regarding the incident was developed because the documentation did not contain any other facts and Applicant cannot recall the incident. (GE 8, at 3; GE 9, at 8)

SOR ¶ 2.g.: In January 1995, he was arrested and charged with simple assault, a misdemeanor. He had dropped off his “expensive clothes” at the cleaners, and when he went to retrieve them, he discovered that they had destroyed them by using too much bleach. He was furious and decided to grab them and leave without paying for the “poor service.” The store manager followed him out and grabbed him. He turned around and smacked her. He was convicted and sentenced to confinement (work release) for 180 days (150 days suspended), and two years’ supervised probation. (GE 8, at 3; GE 9, at 4; GE 10, at 4-6)

SOR ¶ 2.h.: In May 1997, he was arrested for destruction of property over \$200, a felony. He had previously given his girlfriend a laptop computer, but after an argument, he took it back and threw it into the trash, where the police found it. He was held for several hours, but the prosecutor declined to file a charge, and the matter was dismissed when it was “non-papered.” (GE 8, at 3-4; GE 9, at 4; GE 10, at 7)

SOR ¶ 2.i.: In April 2003, a temporary peace order was issued against him, directing that he shall not commit an unspecified prohibited act; that he not contact the unidentified petitioner; that he shall not enter an unspecified location; and that he shall stay away from an unspecified someone or some thing or place. The peace order was dismissed one week later. (GE 11, at 1-2) The basis for the peace order was not reported.

SOR ¶ 2.j.: In October 2005, another temporary peace order was issued against him, directing that he shall not commit an unspecified prohibited act; that he not contact the unidentified petitioner; that he shall not enter an unspecified location; and that he shall stay away from the residence of the unspecified petitioner. The peace order was reissued one week later, and finally dismissed three weeks later. (GE 11, at 3-5) The basis for the peace order was not reported.

SOR ¶ 2.k.: In January 2007, he was arrested and charged with simple assault – domestic violence, after a physical altercation with his brother. Four months later, the charge was dismissed for want of prosecution. (GE 9, at 5; GE 10, at 8-11; AE E; Second Answer, at 3)

SOR ¶¶ 2.l., 2.m., and 2.n.: In May 2007, August 2007, and January 2010, temporary peace orders – all involving the same girlfriend as the petitioner – were issued against him. They essentially directed that he shall not abuse, shall not contact, shall not enter residence, and shall stay away from school. Each of the peace orders was

dismissed when neither party appeared. (GE 11, at 6-8) The basis for the peace orders was not reported.

SOR ¶ 2.o.: In May 2010, he was arrested and charged with simple assault, a misdemeanor. The charge was dismissed in September 2010. (GE 9, at 5-6; GE 10, at 12-16; AE E) The basis for the charge was not reported.

SOR ¶ 2.p.: In August 2011, he was arrested and charged with attempted threats to do bodily harm – domestic violence, after a verbal dispute with his daughter. Upon his plea of guilty, he was sentenced to one year of supervised probation and 180 days (suspended). (GE 9, at 6; GE 10, at 17-20; AE E; Second Answer, at 3)

SOR ¶ 2.q.: In November 2011, a temporary peace order was issued against him, and one week later, a final peace order was issued. (GE 11, at 9-10) The basis for the peace order was not reported.

SOR ¶ 2.r.: In April 2012, depending on which GE is accurate, he was either arrested and charged with obstructing police – disobeying a lawful order; traffic offense – speeding 83/55 mph; and disorderly conduct, according to the Federal Bureau of Investigation (FBI) Identification Record (GE 9, at 6-7), or arrested and charged with speeding; and interfering with agency functions – disobeying a lawful order, according to the district court and the Violation Notice that was issued to him by the police. (GE 12) I find the court documentation more persuasive as it is primary evidence, not secondary evidence. He was fined for the speeding charge, and the violation of the lawful order charge was dismissed upon a plea agreement. (GE 12)

SOR ¶ 2.s.: In July 2012, a temporary peace order was issued against him, directing that he shall not abuse, shall not contact, shall not enter residence, and shall stay away from employment of the unspecified petitioner. The peace order was reissued one week later, and finally dismissed three weeks later. (GE 11, at 11) The basis for the peace order was not reported.

SOR ¶ 2.t.: In June 2015, he was arrested and charged with simple assault – domestic violence and attempted possession of a prohibited weapon (a stick), after his soon-to-be ex-brother-in-law came to the family home and repeatedly created a disturbance. Applicant simply attempted to protect his mother and sister. The following month, the charges were dismissed for want of prosecution. (GE 9, at 7; GE 10, at 21-23; Second Answer, at 3)

Applicant is remorseful about his violent past and he contends that he is no longer the person he was when he was involved in the above conduct, and that his life now has meaning and purpose. Although he screwed up in the past, he loved being in the military. Nevertheless, he acknowledged that he was “a screw up operating on auto pilot trying to find myself.” Now that he has found himself, he can admit that he is not perfect. He is a man who made mistakes, and he pays for them every day with the thought of knowing that he did something wrong. He apologizes for the past, but he cannot change what

previously occurred. He can, however, ensure that it will never happen again. (Second Answer, at 3-4)

Character References

Applicant's mother, older brother, and middle sister, are effusive in praise for him, recognizing the difficulties he encountered when he was growing up. His brother recalled the very traumatic childhood Applicant went through when he was physically, mentally, and sexually abused by their father and stepmother. On one Christmas occasion, he received no gifts, but was forced to sit and watch while the other members of the family opened their gifts. At one point, their father tried to turn him over to the state. Applicant is characterized as kind, caring, a man of character and integrity, considerate, compassionate, very loving, engaging, and funny. He spreads his hugs and kisses to the entire family, especially the children, and he serves as a mentor to one of his nephews. Applicant's past actions were due to the only way he knew how to deal with his problems: he fought as a child and young adult. Now, he has direction and a purpose, and he cries when he speaks about his past. For overcoming his troubled past, Applicant is considered a success story. (AE AW; AE X; AE Z)

Current and former work colleagues are also extremely supportive of Applicant's access to classified information. One individual, a lead network architect, considers him to be one of the most dedicated engineers that he has experienced in his career. He has a strong work ethic, high quality work, adherence to protocol, knowledge and ability, and a sincere ambition to serve others with the very best of his efforts. He is trustworthy and honest. He is a fast-learner, and he is very careful and cautious about his work. In part, because he has gone out of his way to welcome newcomers and resolve any problems they might have, pitches innovative ideas at company meetings, accepts constructive criticism, and remained late to complete time-sensitive projects, he has often been given additional responsibilities and assumed a leadership role. (AE Y)

A former colleague worked with him for approximately six years, and aside from his favorable comments regarding Applicant's work performance, he commented favorably regarding his personal life, about which he is very familiar. He noted that Applicant will be the first to admit that at times he has been quick tempered, but he seems to be doing all in his power to be more self-aware and in control of his actions and reactions. (AE AV)

One individual, who has a nonprofit organization that operates transitional housing for returning citizens, has known Applicant for over 50 years. He has watched him grow up into a respectable, dependable, and trustworthy man. He is honest, walks with integrity, and has a strong work ethic and sense of responsibility. Applicant has volunteered to prepare a transition house to receive new participants, but also served as a mentor to teach the individual's son and his cousin about painting professionally, cleaning up responsibly, and the importance of working hard, studying for school, and being careful about the people with whom he hangs around. He has no reservations concerning Applicant's character and fitness for a security clearance. (AE AU)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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, *Safeguarding Classified Information Within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “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 Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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 as well. It is

because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan, 484 U.S. at 531*)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; 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 had ten delinquent SOR-alleged accounts totaling approximately \$25,165, as well as a number of delinquent accounts that were not alleged in the SOR. He claimed that he did not have sufficient funds to maintain them in a current status. When the SOR was issued in November 2019, nearly all of his accounts were still delinquent, and Applicant had only made a few voluntary payments to creditors. AG ¶¶ 19(a), 19(c), and 19(f) have been established, but there is insufficient evidence that Applicant had been unwilling to satisfy his debts regardless of an ability to do so, and AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under 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;

(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

(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.

AG ¶¶ 20(b), 20(d), and 20(g) fully or partially apply, but none of the other conditions apply. A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). Applicant attributed some of his financial problems to having to make \$1,700 in monthly child-support payments, and although he did not focus on other factors, he experienced a number of short-term periods of unemployment between positions, as well as some health issues.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously; nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. In this instance, Applicant has resolved, or is in the process of resolving, both his SOR-related debts and those that were not alleged in the SOR.

Applicant managed to address and resolve only one of his SOR-related delinquent accounts before the SOR was issued. He started addressing the other delinquent accounts after the SOR was issued. An applicant who begins to resolve financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018)). However, as to those remaining SOR-related accounts, most of them have been resolved, with only four of them still in the process of being resolved.

The nature, frequency, and recency of Applicant's former financial difficulties, and his general failure to voluntarily and timely start to resolve them until the SOR was issued, is sufficient to conclude that his financial difficulties were not infrequent. However, his strong showing that most of the accounts are now resolved, or about to be resolved, along with his substantial increase in the amount of money that will be available for discretionary spending or savings each month, indicate that the financial problems are substantially in the past.

The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

While there is no evidence of financial counseling, Applicant did seek assistance from an organization to clean up his financial situation. He subsequently cancelled the professional relationship and started addressing his delinquent accounts by himself.

While the timeliness of his efforts to resolve his debts is not good, the subsequent substantial positive and successful efforts is very good. He is in a much better position financially than he had been. Applicant's actions, or inaction, under the circumstances no longer cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal 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.

The guideline notes three conditions under AG ¶ 31 that could raise security concerns:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (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; and
- (e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

During the 27-year period 1988-2015, Applicant was arrested and charged on 12 occasions for a variety of incidents, mostly involving his violent behavior with former girlfriends or family members – assaults – and destruction of property. Of those 12 incidents, he was "convicted" of only 4 criminal charges, and was sentenced to either probation before judgment; probation and community service; 30 days' work-release confinement; or supervised probation. He also had seven temporary peace orders issued, restricting his ability to be near individuals – generally former girlfriends – or locations. Accordingly, based on the actions described above, AG ¶¶ 31(a) and 31(b) have been established. While Applicant was discharged from the military for poor performance with a general discharge under honorable conditions, I do not believe that is the same as less than honorable under the intention of that portion of the condition, and AG ¶ 31(e) has not been established

The guideline also includes examples of conditions under AG ¶ 32 that could mitigate security concerns arising from criminal conduct. They include:

(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.

AG ¶¶ 32(a) and 32(d) apply. As noted above, on a number of occasions between 1988 and 2015, Applicant was arrested and charged with a variety of crimes, essentially assault and destruction of property, and issued temporary peace orders. Applicant seems to be the major source of the information regarding those incidents, for his explanations have gone unrebutted. Examining the rather sketchy damaging documentary evidence submitted against him, and the substantial number of dismissals, leads to a conclusion that Applicant's explanations are essentially true. It is significant that he does not deny having been angry and violent in his past.

However, so much time has elapsed since that alleged criminal behavior happened – at least five and one-half years since the last alleged incident – and the most recent incident happened under such unusual circumstances involving a soon-to-be ex-brother-in-law creating a disturbance with Applicant's mother and sister, and there has been no more recent similar behavior of conduct, that it appears that it is unlikely to recur. Applicant contends that he is no longer the person he was when he was involved in the alleged criminal conduct, and that his life now has meaning and purpose. He acknowledged that he was “a screw up operating on auto pilot trying to find himself.” But, he has finally freed himself from the negativity of his troubled youth and early adulthood. Some of his character references substantiate the transition from an abused child, to a violent adult, and the transformation to a loving, caring, peaceful adult. Other character references attest to his excellent work performance and caring nature.

A person should not be held forever accountable for misconduct from the past, and in this instance the most recent alleged criminal conduct is over one-half decade ago. There are no concerns about future criminal conduct. Applicant's past history of criminal conduct, under the circumstances, no longer casts doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct 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 will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes an example of a condition that could raise security concerns under AG ¶ 16:

(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.

My discussion related to Applicant's criminal conduct is adopted herein. Moreover, as noted above, Applicant received a general discharge under honorable conditions from the U.S. Army in April 1987 for unsatisfactory performance, essentially for a variety of military violations during 1986-87. He explained that he was young and did not understand life. He conceded that he was disrespectful at times, and had numerous fights. As to the allegations regarding the alleged criminal conduct and his military discharge, AG ¶ 16(c) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

(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.

AG ¶¶ 17(c), 17(d) and 17(e) apply. My comments associated with the criminal conduct section also apply in an assessment of personal conduct concerns. Applicant was given a general discharge under honorable conditions from the U.S. Army in 1987 – nearly 24 years ago. His most recent alleged criminal conduct is over one-half decade ago. He has repeatedly expressed remorse for his attitude and actions from his past. Those who know him attest to his trustworthiness, reliability, and outstanding performance. It is highly unlikely that Applicant's alleged personal conduct, especially that which was associated with his criminal conduct, will recur.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Applicant had ten delinquent SOR-alleged accounts totaling approximately \$25,165, as well as a number of delinquent accounts that were not alleged in the SOR. When the SOR was issued in November 2019, nearly all of his accounts were still delinquent, and Applicant had only made a few voluntary payments to creditors. When he was discharged from the U.S. Army in 1987, he was issued a general discharge under honorable conditions because of unsatisfactory performance, essentially related to repeated violations of military standards and requirements, performance, and military disciplinary actions. In addition, during a 27-year period, ending in 2015, he was arrested

and charged on 12 occasions for a variety of incidents, mostly involving his violent behavior with former girlfriends or family members. He was also issued seven temporary peace orders restricting his ability to be near individuals or locations.

The mitigating evidence is simply more substantial and compelling. Applicant is a 55-year-old employee of a defense contractor. He has been serving as a senior network engineer since July 2019. He has previously held a variety of positions (network engineer, development network engineer, deployment network engineer, information management senior specialist, and senior network engineer) with different employers since early 2003. He has received an offer from a new employer for a position of senior network engineer with a starting annual salary of \$160,000. He is a 1983 high school graduate. He enlisted in the U.S. Army in October 1984, and served on active duty until April 1987. He was granted a secret clearance on an unspecified date. He has two children. Of his SOR-related debts, he has resolved most of them, and he is in the process of resolving the few remaining ones. He has also resolved debts that were not alleged in the SOR. He has not been involved in any criminal misconduct for over one-half decade, and he is remorseful about his past conduct.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] 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 [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) 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 payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant’s current financial track record is finally very good. Eventually, after some unexplained delays until the SOR was issued, he started focusing on his delinquent accounts and started to resolve them himself. Most of them have now been resolved, with the few remaining debts actually in the process of being resolved. His military career came to an end 33 years ago. His criminal conduct ceased over one-half decade ago. Overall, the evidence no longer leaves me with any questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude

Applicant has mitigated the security concerns arising from his financial considerations, criminal conduct, and personal conduct. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.j.:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a.:	Moved to Subparagraph 3.b.
Subparagraphs 2.b. through 2.t.:	For Applicant
Paragraph 3. Guideline E:	FOR APPLICANT
Subparagraphs 3.a. and 3.b.:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge