



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



In the matter of:)
))
[Redacted])) ISCR Case No. 20-01570
))
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2022

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines J (Criminal Conduct), E (Personal Conduct), and F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on November 6, 2018. On September 23, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines J, E, and F. The CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February

25, 2021. Scheduling of the hearing was delayed by the COVID-19 pandemic. The case was assigned to me on September 24, 2021. On November 17, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on December 2, 2021. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until December 17, 2021, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A through U, which were admitted without objection. DOHA received the transcript (Tr.) on December 10, 2021. The record closed on December 17, 2021.

Administrative Notice

Department Counsel requested that I take administrative notice of Articles 128 and 134 of the Uniform Code of Military Justice and the relevant portions of the Manual for Courts-Martial. Without objection from Applicant, I granted the request. (Tr. 12-14.) The facts administratively noticed are set out in my findings of fact.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b and 2.a in part and 3.a-3.g, with explanations. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 35-year-old manufacturing technician employed by defense contractors since February 2014. He has held a security clearance since August 2004. He earned a bachelor's degree in June 2016. He has been married since December 2009 and has an 11-year-old son and two stepchildren, ages 20 and 16, who live with him and his wife. (Tr. 23.) Applicant enlisted in the U.S. Marine Corps while in high school and served on active duty, including two tours of duty in a combat zone, from August 2004 to February 2013, when he received a dishonorable discharge. (Tr. 26-27.)

Criminal Conduct, cross-alleged as Personal Conduct (SOR ¶¶ 1.a, 1.b, and 2.a).

The SOR alleges that an allegation of child physical abuse was substantiated against Applicant based on unexplained injuries inflicted on the child between August and December 2010 (SOR ¶1.a). It also alleges that he was convicted by court-martial for aggravated assault and child endangerment in December 2012 after his ten-month-old son suffered severe immersion burns in August 2011 while in his care (SOR ¶ 1.b).

In December 2010, Applicant and his wife took their infant son to a doctor for a scratched palate. Their son was two months old at the time. The doctor found no problem with the palate but found signs of a fractured rib. Further examination found signs of a fractured clavicle and possible deformity of the distal femur. The doctor reported his findings to the local civilian child protection service, who in turn reported them to the military family advocacy program (FAP). The FAP Incident Determination Committee

concluded that the incident met the criteria for entering a determination of child physical abuse in the DOD Central Registry database. (GX 3 at 27-28.)

Applicant claimed he did not know how his son's injuries could have occurred. His wife declined to be interviewed. Applicant was not sure whether his mother-in-law was interviewed. (Tr. 41.) The FAP investigation could not determine who caused the injuries. The baby was removed from the home and placed with Applicant's sister-in-law. The FAP Clinical Counseling Service recommended multiple counseling programs, workshops, and support programs for Applicant and his wife if the allegations of child physical abuse were confirmed. The Clinical Counseling Service determined that the risk of future abuse was low and that the recommendation for the various programs was made to further reduce the level of risk. (GX 3 at 29.) The child was returned to the home in June 2011, when Applicant was reassigned to another location. The FAP at his new duty station received an email from the previous FAP stating that Applicant had completed his treatment plan and the case was being closed. (GX 3 at 27.) The record does not reflect what his treatment plan required. The FAP at his new duty station closed the case without further action. (GX 3 at 2-3, 22.)

In August 2011, Applicant's son suffered severe scalding burns covering 35% of his body while in a bathtub of hot water. Applicant had decided to bathe his son while his wife was taking a nap. He placed his son in the bathtub, turned on the water with his son sitting in the tub with his back to the faucet. He left the water run for a few minutes, touched it about three times to check the temperature, and then stepped away for 30-45 seconds, facing away from his son, to retrieve soap from the vanity. He heard his son whimper, and he turned around and saw his son on his back, screaming, squirming and trying to get up. When he took his son out of the tub, the water was very hot, and the skin on his son's back and arms was blistered. He immediately called 911 and reported that his son had been burned and that his skin was peeling. (GX 3 at 21-22.) The NCIS determined that the hot water temperature in Applicant's home was 145.9 degrees instead of the customary 130 degrees. (GX 3 at 11.)

After Applicant's son received skin grafts and was released from the hospital, he was placed in the custody of Applicant's mother-in-law. A military protective order was issued, limiting Applicant's contact with his children. (GX 3 at 13.) Applicant was required to move into the barracks, where he remained until his court-martial in December 2012. (Tr. 41-43.)

Applicant was charged with four specifications of assault consummated by a battery on a child, in violation of Article 128, Uniform Code of Military Justice, 10 U.S.C. § 928, and five specifications of child endangerment by culpable negligence, in violation of Article 134, UCMJ, 10 U.S.C. § 934. He was tried by general court-martial in December 2012. He was found not guilty of all four specifications of assault consummated by a battery on a child and not guilty of four of the five specifications of child endangerment. He was convicted of one specification of child endangerment by culpable negligence. The maximum punishment prescribed for child endangerment in the 2008 version of Manual for Courts-Martial (applicable because the offense was committed in 2011) was a

dishonorable discharge, forfeiture of all pay and allowances, and confinement for two years. He was sentenced to a dishonorable discharge and confinement for 60 days. He was released from confinement after serving 30 days.

Applicant testified that his son is receiving reconstructive surgery, but not any mental-health counseling. He testified that he and his wife received “a lot of training or counseling” while their son was in the custody of his mother-in-law, but nothing after the family was reunited. (Tr. 42-43.)

Financial Considerations

The SOR alleges seven delinquent debts totaling about \$16,793. The debts alleged in the SOR are reflected in credit reports from December 2018 and February 2020, as well as three credit reports from December 2021 submitted by Applicant after the hearing (GX 3 and 4; AX S, T, and U.)

Applicant was unemployed for about two months after being discharged in February 2013. He worked at minimum-wage jobs as a cashier in a supermarket and in a gas station from April 2013 to February 2014, when he was hired by his current employer. (GX 1 at 12-14; Tr. 48.) He, his wife, his stepchildren, and his son all lived with his mother-in-law, because they had no savings and could not afford to find a place to live. (Tr. 52-53.)

Applicant hired a law firm in February 2019 to negotiate with creditors and to remove incorrect information from his credit reports. (GX 2 at 12.) He provided copies of two letters prepared for him by his law firm and sent to one of the credit bureaus and 27 letters sent to the creditors alleged in SOR ¶¶ 3.c-3.g. The letters request verification of the debts. All letters were sent before the SOR was issued. (AX F.)

The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶ 3.a: collection account for \$8,163. During a personal subject interview (PSI) in April 2019, Applicant told the investigator that he was unaware of this account when he submitted his SCA, and he did not know anything about it. (GX 2 at 9.) It was sold to a factoring company in August 2016. The original creditor is an on-line bank. (GX 4 at 16.) In May 2019, July 2019, September 2019, and November 2019, Applicant sent letters to collection agency reflected in the December 2018 credit report (GX 4 at 16.) disputing the validity of the debt. (AX F at 6, 13, 17, 23.) There is no evidence of a response to his letters, but the February 2020 credit report reflects that the debt is disputed. (GX 5 at 2.) It is not resolved. (AX Q at 1; AX S at 36.)

SOR ¶ 3.b: credit-card account charged off for \$3,892. During the PSI, Applicant told the investigator that he failed to disclose this debt in his SCA due an oversight. He used the credit card for living expenses and fell behind on his payments after his dishonorable discharge from the Marine Corps. (GX 2 at 12.) This account was closed at his request and settled for the full balance. (AX Q at 3.)

SOR ¶ 3.c: collection account for \$1,294. During the PSI, Applicant told the investigator that he thought this debt was for a credit card. (GX 2 at 9.) The December 2018 credit report reflects that the current creditor is a factoring company, and the account is being collected by the same collection agency as the debt alleged in SOR ¶ 3.a. It was included in the dispute letters for the debt in SOR ¶ 3.a. (AX F at 6,13, 17, 23.) There is no evidence of a response to his letters, but the February 2020 credit report reflects that the debt is disputed. (GX 5 at 2.) It is not resolved. (AX Q at 2; AX S at 37; AX T.)

SOR ¶ 3.d: credit-card account charged off for \$1,095. During the PSI, Applicant told the investigator that he failed to disclose this debt in his SCA due to oversight, and that he fell behind on his payments in 2016 due to low income. (GX 2 at 12.) The debt was charged off in February 2018. (GX 4 at 6.) Applicant sent letters to this creditor in August 2019, October 2019, and March 2020, disputing this debt as "suspicious," and claiming a possible violation of the Servicemembers Civil Relief Act. (AX F at 7, 14, and 19.) There is no evidence of a response to his letters, but the February 2020 credit report reflects that the debt is disputed. (GX 5 at 2.) It is not resolved. (AX Q at 2; AX S at 25.)

SOR ¶ 3.e: unsecured loan charged off for \$607. During the PSI, Applicant told the investigator that he used this loan to pay household expenses and medical expenses for his children, and that he fell behind on his payments in 2018 due to low income. (GX 2 at 11.) This debt was settled for less than the full amount in April 2020. (AX Q at 4; AX R.)

SOR ¶ 3.f: department-store charge account placed for collection of \$764. In the PSI, Applicant was not able to provide any information about this debt. The December 2018 credit report reflects that the debt is held by a factoring company and was referred for collection in June 2017. (GX 4 at 16.) Applicant sent letters disputing the validity of this debt in March 2019, May 2019, June 2019, August 2019, October 2019, December 2019, and February 2020. (AX F at 8, 11, 12, 15, 20, 21, 24, 28, and 31.) There is no evidence of a response to his letters, but the debt is not reflected in the February 2020 credit report or the December 2021 credit report. (GX 5; AX S.)

SOR ¶ 3.g: mail-order debt placed for collection of \$764. In the PSI, Applicant was unable to provide any information about this debt. (GX 2 at 11.) The December 2018 credit report reflects that this account was closed in July 2017 and purchased by another lender. (GX 4 at 8.) Applicant sent letters disputing this account in April 2019, June 2019, July 2019, and September 2019. (AX F at 18, 22, 25, 26, and 29.) There is no evidence of a response to his letters, but the debt is not reflected in the February 2020 credit report or the December 2021 credit report. (GX 5; AX S.)

Applicant's wife is not employed outside the home. Applicant earns about \$73,000 per year. He volunteered for a four-month assignment overseas to earn additional income. (Tr. 50.) Based on his first four-year enlistment in the Marine Corps, he was able to use his educational benefits to obtain his college degree.

In addition to hiring a law firm to assist him, Applicant has educated himself about budgeting and financial management. (Tr. 22, 59.) He has adopted a “snowball” method of accumulating funds to pay off or settle debts. (Answer to SOR.) His recent credit reports reflect that he has a total of nine credit cards and charge cards, and he has a zero balance on eight and only a total of \$19 in credit-card debt. (AX S at 1-10.)

Applicant qualified for a Department of Veterans’ Affairs loan and purchased a home. His monthly payment on his home mortgage loan is \$1,375, and it is current. (Tr. 60.) He drives an 11-year-old car that is paid off. (Tr. 61.) His wife drives a 2017 car that they purchased in 2020. The monthly payment on her car is \$273 and it is current. (Tr. 60-61.)

Character Evidence

Applicant’s pastor, who has known him and his family since 2014, describes him as “authentic, sensitive, friendly, honest, reliable, and always willing to help others.” He considers Applicant a great role model for his son and two stepsons and a faithful husband. (AX A.) The record does not reflect whether Applicant’s pastor is aware of the allegations of criminal conduct.

Applicant’s mother-in-law had custody of Applicant’s son after the August 2011 incident. She considers Applicant to be honest, conscientious, polite, and a “family person.” She considers his integrity to be above reproach. (AX B.)

Applicant’s first-line supervisor describes him as “extremely accountable, punctual, respectful, quick-learning, and an all-around pleasure to work with.” He has a positive attitude and demonstrates how much he cares about his work and helping others. (AX C.) In July 2021, he evaluated Applicant as a “total team player” who is “continuing to grow as a technician as well as a leader.” (AX H.) He nominated Applicant for two achievement awards in December 2021. (AX D and E.) Applicant’s team was recognized for exceptional performance in April 2017, July 2018, December 2019, December 2020, and November 2021. (AX I, and K-O.) He received pay raises in 2019 and 2020, increasing his base pay from \$56,000 to \$73,986. (AX G.)

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 J, Criminal Conduct

The SOR alleges that an allegation of child abuse between August and December 2010 was substantiated against him (SOR ¶ 1.a), and that he was convicted by a general court-martial of aggravated assault and child endangerment in August 2011 (SOR ¶ 1.b).

The concern under this guideline 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 evidence establishes the following disqualifying conditions under this guideline:

AG ¶ 31(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

AG ¶ 31(e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 32(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;

AG ¶ 32(c): no reliable evidence to support that the individual committed the offense; and

AG ¶ 32(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) are established. The incidents alleged in SOR ¶¶ 1.a and 1.b occurred more than ten years ago, with no recurrence. The incident alleged in SOR ¶ 1.b was the result of negligence by an inexperienced new father and not the product of anger or frustration. Applicant was reunited with his family after his discharge from the Marine Corps, and he is regarded by his mother-in-law and his pastor as a good father.

AG ¶ 32(c) is established for the conduct alleged in SOR ¶ 1.a. The fact that the court-martial acquitted Applicant of the conduct alleged in SOR ¶ 1.a is not determinative, because the standard of proof in a court-martial is guilt beyond a reasonable doubt, as

compared with the standard for raising a security concern, which is much lower, *i.e.*, substantial evidence. However, the FAP investigation could not determine who injured the child or how the injuries occurred.

Guideline E, Personal Conduct

The SOR cross-alleges the criminal conduct alleged in SOR ¶¶ 1.a and 1.b under this guideline. 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. . . .”

I have considered whether any of the following disqualifying conditions under this guideline are potentially applicable:

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;

AG ¶ 16(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;

AG ¶ 16(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 . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

AG ¶ 16(c) is not applicable because Applicant's conduct does not involve "several adjudicative issue areas." AG ¶ 16(d) is not applicable because Applicant's conduct is "explicitly covered" under Guideline J. AG ¶ 16(e) is established because Applicant's conviction by court-martial could affect his personal, professional, and community standing.

The following mitigating conditions are potentially applicable:

AG ¶ 17(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;

AG ¶ 17(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;

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(c) is established. Applicant's culpable negligence was not minor, but it happened more than ten years ago and has not recurred.

AG ¶¶ 17(d) and 17(e) are established. Applicant has acknowledged his culpable negligence, completed the counseling recommended by the FAP, and has earned a reputation as a good father.

AG ¶ 17(f) is established for the charges of aggravated assault on a child, alleged in SOR ¶ 1.a, which were unsubstantiated.

Guideline F, Financial Considerations

The SOR alleges seven delinquent debts totaling about \$16,793. The security concern under this guideline 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. . . . 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The evidence establishes the following disqualifying conditions under this guideline:

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

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

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;

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

AG ¶ 20(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.

AG ¶ 20(a) is not fully established. Although Applicant has made significant progress in resolving his delinquent debts, the debts alleged in SOR ¶¶ 3.a, 3.c, and 3.d are not yet resolved.

AG ¶ 20(b) is not established. Applicant's discharge from the Marine Corps and subsequent unemployment and underemployment were due to his culpable negligence.

AG ¶ 20(c) is not fully established. Applicant has received legal advice and counseling from his law firm and has educated himself on financial management. However, the evidence falls short of "clear indications" that the problem is being resolved.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 3.b and 3.e. It is not fully established for the other debts alleged in the SOR. However, a security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Applicants are not held to a standard of perfection in their debt-resolution efforts or required to be debt-free. All that is required is that applicants act responsibly given their circumstances and "develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014). Applicant has a plan, and he is systematically carrying it out to the extent that his limited income permits.

AG ¶ 20(e) is not established. Applicant testified that he believed many of the delinquent debts on his credit reports were erroneous, but he was unable to provide documentary proof to support his claims, in part because he is in the impossible position of having to prove a negative. His law firm appears to have used the common practice among credit-repair specialists of challenging every debt on the credit report whether or not there is a documented basis for the challenge. On the other hand, it is clear that Applicant believed that some of the information was erroneous, simply because he could not recognize some of the debts.

The fact that the debts in SOR ¶¶ 3.f and 3.g no longer appear on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports for various reasons, including the passage of time. See, e.g., ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019). The debts alleged in SOR ¶¶ 3.f and 3.g are not old enough to "age off" his credit report under the Fair Credit Reporting Act. Thus, their absence strongly suggests that either the dispute was resolved in his favor or that the creditor abandoned the claim. However, the fact that a creditor is no longer actively seeking payment or that a debt is not otherwise collectable does not establish that the debt has been resolved within the meaning of the Directive. ISCR Case No. 10-03656 (App. Bd. Jan. 19, 2011).

After considering all the mitigating evidence, I conclude that Applicant's resolution of the debts alleged in SOR ¶¶ 3.b and 3.e and his systematic approach to resolving his other delinquent debts within the limits of his income are sufficient to mitigate the security

concerns under this guideline. I am confident that he understands that failure to fully resolve his financial problems may result in reconsideration of his suitability to hold a security clearance.

Whole-Person Concept

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. An 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.

I have incorporated my comments under Guidelines J, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant served on active duty in the Marine Corps for more than eight years, including two tours of duty in a combat zone. He was candid, very remorseful, and credible at the hearing. His demeanor eloquently reflected his anguish and remorse for the harm he had caused to his son. He was emotional and uncomfortable when he testified about the August 2011 incident. His demeanor is reflected in the transcript by Department Counsel's admonition, "I know this is hard for you . . . but I have got to go through these by virtue of the fact that they're on the Statement of Reasons." (Tr. 39.)

Applicant is devoted to "making it up" to his son for his culpable negligence. He is considered by his pastor as a role model for his son. His reputation in the workplace is stellar and reflected in his numerous awards exceptional performance.

A security clearance adjudication is not intended to punish past criminal conduct, but rather to determine whether an applicant has the reliability, trustworthiness, and good judgment required to protect classified information. Applicant has been punished for his criminal conduct, and he has learned from his experience and demonstrated his suitability for a security clearance.

After weighing the disqualifying and mitigating conditions under Guidelines J, E, and F, and evaluating all the evidence in the context of the whole person, I conclude

Applicant has mitigated the security concerns raised by his criminal conduct, personal conduct, and delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline J (Criminal Conduct): FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 3.a-3.g: For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge