



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



In the matter of:)
)
) ADP Case No. 19-01178
)
Applicant for Public Trust Position)

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: Patrick J. Hughes, Esq.

09/16/2022

Decision

MURPHY, Braden M., Administrative Judge:

The Statement of Reasons concerns Applicant’s various delinquent debts and his failure to disclose them on his September 2017 electronic questionnaires for investigations processing (e-QIP). Personal conduct trustworthiness concerns are mitigated but Applicant did not provide sufficient evidence to mitigate financial considerations trustworthiness concerns. Applicant’s eligibility for access to sensitive information is denied. [Note: Applicant initially applied for a security clearance, through previous employment. He is now sponsored for eligibility for access to sensitive information, as discussed below]

Statement of the Case

Applicant submitted an e-QIP application on September 29, 2017. On May 9, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing what were then security concerns (rather than trustworthiness concerns) under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The DOD took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial*

Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the National Security Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

Applicant received the SOR on or about September 3, 2019, and he subsequently submitted an unsigned, undated response (Answer) in which he addressed each allegation, but did not indicate whether or not he wanted a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). DOHA processed the case as a hearing and the case was assigned to me on March 2, 2022. Applicant subsequently retained counsel. On June 13, 2022, DOHA issued a notice scheduling the hearing to occur by video teleconference through an online platform on July 7, 2022.

The hearing convened as scheduled. Applicant confirmed that he had requested a hearing. (Tr. 4) Department Counsel submitted Government's Exhibits (GE) 1-4 and Applicant's counsel submitted Applicant's Exhibits (AE) 1-5, all of which were admitted without objection. Applicant and three other witnesses testified.

I left the record open until July 22, 2022, to allow Applicant the opportunity to submit additional information and for Department Counsel to confirm a jurisdictional matter, addressed below. Applicant subsequently requested and received additional time to respond, without objection. Applicant did not submit additional documentation for consideration by the time the record closed on August 24, 2022. DOHA received the hearing transcript (Tr.) on July 25, 2022.

Applicant's Sponsorship, Jurisdiction, and Clearance Status

During Applicant's hearing, questions arose as to Applicant's sponsorship, DOHA's jurisdiction over his case, and the effect of clearance eligibility granted by another government department (AGD), as referenced in AE 5. (Tr. 138-143)

Applicant indicated during his hearing, and Department Counsel subsequently confirmed, that he has been sponsored by contractor D since August 2021. (Tr. 7-9; HE III) Department Counsel also noted that the clearance process of the AGD "does not flow through DOD. They conduct their own background investigations." (HE XX) Thus, its view was that DOHA has jurisdiction to adjudicate Applicant's eligibility here. (See *also* comments of Applicant's counsel (Tr. 22-23)) Indeed, the AGD referenced in AE 5 is not one of the U.S. Government departments or Federal agencies with whom DOD has a mutual agreement under which DOD Directive 5220.6 applies. (See Directive 5220.6 at pp. 1-2) Accordingly, the determination of Applicant's eligibility for a clearance by the AGD has no bearing on DOHA's jurisdiction over this case, nor is adjudication of Applicant's eligibility barred under principles of reciprocity.

The level of access for which Applicant is sponsored (Sensitive or Classified)

The SOR was issued after Applicant submitted his September 2017 e-QIP, which was based upon his employment with defense contractor C. who was sponsoring him for access to classified information. Applicant now works for defense contractor D, and the parties both represented during the hearing that he was now sponsored for a position of public trust, and access to sensitive information, not classified information. (Tr. 7-9)

Accordingly, the caption of the Statement of Reasons and the prefix to the case number are amended to reflect that this case now concerns Applicant's eligibility for access to sensitive information. Thus, Applicant is an "Applicant for Public Trust Position" and this is an "ADP" case, not an "ISCR" case, as noted in the caption, above. (Tr. 7-9) "Security concerns" in this case are addressed instead as "trustworthiness concerns." The same adjudication guidelines apply.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.j with explanations. I construe his answers to SOR ¶¶ 2.a and 2.b as denials of intent to falsify his e-QIP. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old. He graduated from high school in 2000. (GE 1) Motivated to join the military after September 11, he enlisted in the Marine Corps, and served on active duty for four years (2003-2007). He served two tours in combat in Iraq and was discharged honorably. (GE 1; Tr. 54-55) He was unemployed for about nine months in 2007-2008 before taking a job on a security detail in the Middle East for a defense contractor. He spent much of the next three years working for defense contractors. (GE 1; Tr. 52-57)

Applicant then spent a year (2011-2012) working in retail. He was then unemployed for several years (2012-2016) while pursuing his bachelor's degree, which he earned in 2016. (GE 1, GE 2) He indicated in his background interview that he supported himself with his pension and that the post-9/11 GI Bill paid for his education. (GE 2 at 4)

Applicant worked for an insurance company for a few months in 2017 but was terminated after a physical altercation with a customer. (GE 1, GE 2) He was then briefly unemployed again until September 2017, when he began working for defense contractor C, his clearance sponsor. (Tr. 66-67; GE 14) He was released in April 2020, shortly after the beginning of the COVID-19 pandemic, because he did not have a clearance. (Tr. 67, 132) He was then unemployed for about a year. (Tr. 67, 125, 133)

Applicant began working for his current employer in April 2021. (Tr. 133-134) As noted, he is now sponsored for a public trust position. He has an annual salary of \$100,000. (Tr. 113-115) His wife works for a testing laboratory. She has a \$63,000 annual

salary. (Tr. 116-117, 120) Applicant estimated that they have a combined a net monthly income of \$4,000. (Tr. 88-89)

AE 5 is a May 2022 e-mail from an agency of the AGD, confirming Applicant's "favorable adjudication" of his "eligibility for continued performance on the [AGD agency] contract." It also says "this notification does not constitute a security clearance." (AE 5) Applicant testified that he is working on this contract with his current employer.

Applicant also testified that he is a disabled veteran. He said he earns 90% disability benefits, at \$2,300 per month. (Tr. 88, 119) He testified that his disability related to a variety of circumstances and conditions, including PTSD, insomnia, tinnitus, and a combat incident involving blast wounds and shrapnel. (Tr. 119-120) He said he has not participated in mental health counseling, other than when the Department of Veterans Affairs (VA) evaluated his injuries. He did have emergency room (ER) visits (as noted by some of his medical debts). (Tr. 130-131) Applicant did not provide supporting documentation of his disability status with the VA.

Applicant married his second wife in 2019. They have three children together, including a newborn infant born shortly before the hearing. Applicant and his first wife married in July 2005, and separated in June 2007. He said they divorced in 2017. (Tr. 98-99) The marriage produced a daughter (D1), born in 2006, now age 15. D1 lives with her mother in State A. Applicant also has a 10-year-old son (S1), born in 2011 through another relationship. S1 lives with his mother in State B. (Tr. 76-79)

The SOR debts concern past-due child support of over \$120,000, as well as multiple medical debts, a federal student loan, and some phone debts. The debts are listed on credit reports from October 2017 and April 2019. (GE 3, GE 4)

Applicant attributed his debts to his employment instability, depression, and PTSD after he returned from Iraq and the Middle East. He said his life began to turn around when he moved to a new state, met his second wife, and returned to work as a contractor, serving the national interest. (Tr. 58-61) Applicant acknowledged that he cannot afford to be irresponsible, given his current family responsibilities. (Tr. 68-69)

By far the largest debts in the SOR relate to child support. SOR ¶ 1.f (\$78,951) is a debt to a child support agency in State C, where the mother of S1 used to live. (Tr. 79-80, 83-84) GE 3 reflects that the account was opened in January 2008, and was reported for collection in April 2017. (GE 3 at 3)

SOR ¶ 1.a (\$123,882) is a child support debt through State D, where Applicant now lives. The figure alleged is taken from GE 4, an April 2019 credit report, but it is also listed on GE 3 (\$119,468). The account was opened in January 2008 and was reported for collection in September 2017. (GE 3 at 3)

Applicant acknowledged that his child support debts became delinquent because he was negligent and irresponsible. He was travelling, often overseas, and was not in

contact with the mothers of his two children. He said he took responsibility for the debts once he returned to the United States. (Tr. 79, 105-107)

There is no indication that Applicant paid any child support for either D1 or S1 when he was unemployed and in school (2012-2016) Applicant testified that S1's mother told him she intended to file for child support when S1 was about five or six years old, and he acknowledged being negligent in response. (Tr. 122-124) Applicant testified that he did not receive a court order for child support for S1. (Tr. 122-124) He said he took action to address the child support for S1 in 2017. (Tr. 105-106)

In his background interview, Applicant said child support for S1 was finalized in December 2016 and was finalized for D1 in December 2017. He said he paid \$603.14 biweekly through his pay. (GE 2 at 6) (Which child referenced here in the interview summary is unclear, but is likely S1). There are no documents in the record from State B regarding either Applicant's child support requirements or payments to the mother of S1 when she lived there. (regarding SOR ¶ 1.f)

In October 2017, Applicant was ordered by State A to pay \$903 per month in child support to the mother of D1. (AE 2 at 7, 9) In May 2021, Applicant notified the State A court of a change in income because he had been unemployed since April 2020. He noted that he had to pay child support from another relationship (S1) in the amount of \$572. (AE 2 at 13) He noted child support obligations through State D for two children (D1 and S1, presumably) of \$1,475 a month, with a total balance due of \$132,256. (AE 2 at 14) ($\$903 + 572 = \$1,475$) (AE 2; Tr. 102-103, 124-126, 134-135)

In his hearing testimony, however, Applicant testified that he "didn't do a modification. I stayed with the current amount as if I was [still working with contractor C] as in good faith thinking that I was going to go ahead and, you know, I'll find employment later, or soon enough." (Tr. 67-68)

Applicant also testified that he did not miss any child support payments due to his unemployment in 2020-2021. (Tr. 67-68) He appears to have been unemployed from about April 2020 to April 2021. During this period, in fact, he was required to pay \$903 per month to D1's mother. AE 3 reflects that he missed several payments, either in part or in full, until he regained employment and resumed making full payments (or more, for arrearages) in September 2021. (AE 3 at 3-7)

Similarly, AE 4 reflects that Applicant missed several payments either in full (\$572) or in part, during this period of unemployment until September 2021, when full payments resumed. (AE 4 at 2-4)

Applicant also acknowledged that he also only began paying child support for D1 in 2017. (Tr. 104) There are no documents in the record regarding his payments before July 2019 for either D1 or S1.

AE 3 shows State D's documentation of child support payments for S1 since July 1, 2019. As of July 1, 2019, Applicant owed a balance of \$42,444 in child support for D1. He generally owed \$903 in monthly child support for D1. From July 2019 to May 2020, Applicant generally made his required payment, plus some arrearage payments. For some subsequent months, he has made the full payment, and for other months he has not. (AE 3)

Since June 2020 Applicant's arrearage balances generally increased, with limited exceptions. Each month also reflects interest charges, initially of \$139 per month, now up to over \$320 per month. As of June 29, 2022, Applicant owed \$38,661 in arrearages, and \$25,240 in interest, for a total of \$63,901 for D1. (AE 3)

AE 4 shows State D's documentation of child support payments for S1 since July 1, 2019. Some months show payments in full and some show partial payments. Most of the months show an increase in arrearages. As of July 1, 2019, Applicant owed a balance of \$82,063. It has now increased to \$84,902. (AE 4) Applicant now owes almost \$150,000 in child support arrears and interest. (AE 3, AE 4)

Credit reports from April 2019 and May 2022 show Applicant's child support account in State A as closed with a zero balance. (GE 3; AE 1 at 25) No SOR debt is specifically linked to this account.

Applicant believes his remaining SOR debts are resolved. (Tr. 126) Several of them are past-due medical debts, all related to emergency room (ER) visits. These include SOR ¶¶ 1.b (\$637), 1.c (\$630), 1.d (\$430), 1.e (\$394), and 1.i (\$228) (GE 4). Applicant testified and reported in his answer that he believes these debts have all been paid. (Tr. 81-87; Answer) He provided no documentation of these payments.

SOR ¶ 1.g (\$3,244) is a federal student loan debt in collection. (GE 3) Applicant said he has been paying that debt since 2019 at \$687 a month. He believes the debt is resolved. (Answer; Tr. 84-85, 90-92) He provided no documentation of these payments.

SOR ¶ 1.h (\$889) is a cell-phone bill placed for collection. (GE 3) Applicant said in his answer that the account was over 10 years old and had been dropped from his credit report and had been paid. (Tr. 85-87; Answer) The debt is not reflected on a recent credit report (AE 1), but he provided no documentation.

SOR ¶ 1.i (\$537) is a cell-phone bill placed for collection. (GE 3) Applicant believes the account has been closed and paid. (Tr. 87) He provided no documentation.

Applicant said he has not participated in credit counseling. (Tr. 131) A May 2022 credit report indicates no delinquencies, and he said he has no other known debts. (AE 1; Tr. 89) He estimated a monthly remainder of about \$2,000. (Tr. 88)

Under Guideline E, the SOR alleged that Applicant allegedly falsified his September 2017 e-QIP in failing to disclose either his federal debt or his child support

debt (SOR ¶ 2.a) or his various other charged-off debts and debts in collection, current delinquencies, or other routine debts (SOR ¶ 2.b), as required. He answered “No” to all the financial questions on the e-QIP. (GE 1 at 52-53)

However, in the Comments section of GE 1, Applicant wrote:

I have further documents and letters from individuals and organizations that helped me mitigate all my current debts and issues from my past. I hope all the necessary documentation given on my behalf would suffice. I have taken responsibility for my debts and have been making payments towards them. Thank you for your time and patience in my clearance. (GE 1 at 55)

Applicant said that the last time he prepared an e-QIP or security clearance application before 2017 was in about 2010 or 2011, after he returned from the Middle East. (Tr. 94-95, 130) Much of the information in the 2017 e-QIP was prepopulated. “So when it said, ‘no’, I just went over it and [said] ‘no.’ And that’s when I made that comment.” (Tr. 95) Applicant acknowledged negligence “because I didn’t update that thinking that it was already populated – auto-populated already.” (Tr. 130) He said he “skipped over a lot of things. . . all I did was update my address, my residence because I was travelling . . .” (Tr. 62-63)

Applicant testified that he did not know that his federal student loan debt (SOR ¶ 1.g) was delinquent when he submitted his 2017 e-QIP. He said he had been attending community college and had a student loan. He did not attend the full course, so he had to repay the loan, which he did not do. (Tr. 90-91)

Applicant acknowledged delinquencies, but testified that he did not know what type of debts they were. He acknowledged that he had child support debts, but said he did not know he owed “that much,” and said he did not know of any arrearage. He did not review his financial record for verification. He said he did not know about his debts until the investigator showed him his credit report. (Tr. 71-74, 92-93, 97, 107, 128-129)

The child support order in State A is dated October 2017, shortly after Applicant began working for defense contractor C. October 2017 is also the date of his credit report pulled in connection with his 2017 background investigation. Applicant testified that shortly after the court order for \$903 a month in child support owed to the mother of D1, his wages were placed under a garnishment order. (Tr. 109)

Applicant acknowledged under questioning that he knew before October 2017 that he owed child support that he was not paying. (Tr. 110) He acknowledged that he did not list his child support debt on his application. When asked why not, he said thought child support was already listed on his 2017 e-QIP because of what was listed on his 2010 application, though he acknowledged he did not update it in 2017 as he should have. (Tr. 110-111) (Applicant’s 2010 application is not in evidence).

Applicant listed both D1 (born in 2006) and S1 (born in 2011) as his children on his September 2017 application. (GE 1 at 36-37, 40) He acknowledged that S1's mother told him she intended to file for child support when S1 was about five or six years old (in about 2017, or earlier). He said he did not receive a court order for child support for S1. (Tr. 122-124). However, he acknowledged being negligent in response, and said he knew he had child support for S1 that he had not paid. (Tr. 122-124)

In Applicant's first background interview, he was asked whether, in the past seven years, he was delinquent on alimony or child support. He answered "Yes," an answer noted as "discrepant" due to "oversight" (GE 2 at 6) In discussing the status of child support for both of his children, he said child support for S1 was finalized in December 2016 and was finalized for D1 in December 2017. He said he paid \$603.14 biweekly through his pay. (GE 2 at 6)

Applicant's background interview resumed two days later. At the beginning of that interview, he was confronted with various specific debts on his credit report, including the debts at SOR ¶¶ 1.g, 1.h, and the specifics of the child support debt at SOR ¶¶ 1.a and 1.f. (GE 2 at 9) He also brought child support documents to his second interview. (Tr. 112-114; GE 2 at 11) Those documents are referenced in Applicant's interview summary but are not in evidence.

Witness M is a longtime government contractor. She worked with Applicant on a military contract. They met in June 2019, and travelled together for work on assignments several weeks long. She has not seen Applicant since Feb 2020. She attested to his judgment, reliability, trustworthiness, and honesty. She feels he is a hero, an honorable man, and a "stand up" individual. (Tr. 25-33)

Witness W is a retired U.S. Army master sergeant with 24 years' active duty service. He is now with contractor C, Applicant's former employer. He has held a clearance for many years. He and Applicant were co-workers. He trained with and travelled with Applicant. W regards Applicant as an outstanding coworker. He has no concerns about granting him a clearance, and regards him as reliable and trustworthy. (Tr. 34-43)

Witness D is a retired Army colonel. He works for an Army contractor. Applicant and D worked together in a training capacity. They had professional and social interaction. He regards Applicant as reliable and capable. (Tr. 44-51)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

Analysis

Guideline F, Financial Considerations

The trustworthiness concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be

irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 19. The following are potentially applicable in this case:

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

The Government's credit reports and the record evidence establish all of the debts in the SOR. AG ¶¶ 19(a) and 19(c) apply, with one exception.

SOR ¶ 1.f (\$78,951) concerns past-due child support payments to the mother of S1 through State B. SOR ¶ 1.a (\$123,882) is the past-due child support debt through State D, where Applicant now lives. SOR ¶ 1.a concerns the combined total for both D1 and S1, so the SOR ¶ 1.f debt is included in that total. SOR ¶ 1.f is therefore found for Applicant as it is essentially duplicative.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant served four years on active duty in the Marine Corps (2003-2007), including service in Iraq and in combat. He worked for defense contractors for a number of years but then was unemployed from about 2012-2016 while pursuing an education. By this time, he had two children with two different women. In about 2016 or 2017, the mothers of both of his children began pursuing child support payments.

The record is sparse with respect to any child support requirements or payments before then, and the amount of the child support owed is now well over \$100,000. This suggests that by the time the mothers of D1 and S1 filed for child support, Applicant was already well behind. The record of Applicant's payments before July 2019 is also sparse, since AE 3 and AE 4 go back to then but no further. Applicant testified that he began child support payments in 2017.

Since July 2019, Applicant has made payments towards his child support obligations. Some have been payments in full for the month. Some have been more than that, addressing arrearages. Some payments have been missed, resulting in increases in arrearage and interest. Applicant now owes almost \$150,000 in past-due child support and interest for D1 and S1. Applicant's debts are not isolated, are clearly ongoing, and continue to cast doubt on his current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

Applicant's child support obligations likely began after he returned from Iraq and left active duty, in 2007. His first marriage was brief (though they did not divorce until 2017). Applicant had another child in 2011. He was then unemployed for several years while pursuing an education (2012-2016). He does not appear to have paid child support during this period, which is likely why the amount owed is so high. Applicant may also have been depressed or suffering from PTSD or other issues related to his combat and military service at the time. To some extent, Applicant's financial issues relate to circumstances beyond his control. However, Applicant also acknowledged that his debts are due to his own negligence and irresponsibility. AG ¶ 20(b) therefore only has limited application.

Applicant has not pursued credit counseling. He has also not established that there are clear indications that his financial issues are being resolved or are under control. In particular, the fact that Applicant's child support debts and arrearages are now several thousand dollars more than they were as alleged in the SOR shows that Applicant's child support debts are not being resolved and are not under control. AG ¶ 20(c) does not apply.

For similar reasons, AG ¶ 20(d) has little application. Applicant's non-child support debts are comparatively quite small, as they involve a federal student loan, two cell phone debts, and some medical debts from ER visits. Applicant testified that these debts have all been either paid, but he provided no supporting documentation. A current credit report shows no delinquencies, but the fact that a debt may have dropped off a credit report is not enough to show that it is paid or otherwise resolved. Applicant also does not have enough of a track record of steady payments towards his child support debts, current or

otherwise, to show ongoing good faith. As noted, the fact that his child support debts have increased due to ongoing arrearages and interest raises unresolved trustworthiness concerns.

Applicant also testified that child support authorities began garnishing his wages in 2017, when he started working with defense contractor C. If so, repayment through garnishment “is not the same as, or similar to, a good-faith initiation of repayment by the debtor.” ISCR Case No. 08-06058 at 6 (App. Bd. Sept. 21, 2009). I cannot find that AG ¶ 20(d) should fully apply.

AG ¶ 20(e) does not apply. Applicant disputed some of the smaller SOR debts and said that they had been paid, but provided no supporting documentation.

Guideline E, Personal Conduct

AG ¶ 15 expresses the trustworthiness concern for personal conduct:

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

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

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations . . . determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Under Guideline E, the SOR alleged that Applicant falsified his September 2017 e-QIP in failing to disclose his federal debt, and his child support debt (SOR ¶ 2.a) as well as his various other charged-off debts and debts in collection, current delinquencies, or other routine debts (SOR ¶ 2.b), as required. He answered “No” to all the financial questions on the application. (GE 1 at 52-53)

The Government established that Applicant had numerous delinquencies, in September 2017. Applicant acknowledged under questioning that he knew before October 2017 that he owed child support that he was not paying. (Tr. 110) He said thought child support was already listed on his 2017 application because of what was listed on his 2010 application, though he acknowledged he did not update it in 2017 as he should have. (Tr. 110-111) He said much of his 2017 was pre-populated with information from his prior application, and that he “skipped over a lot of things.”

However, Applicant listed both D1 (born in 2006) and S1 (born in 2011) as his children on his September 2017 application, yet did not disclose that he owed past-due child support for either child, as shown in GE 3.

Applicant's statement in the Comments section of GE 1 put the Government on notice that he had "current debts" and had documentation about what he was doing about them. However, his statement is not enough to put the Government on notice that Applicant had past-due debts, such as delinquent child support, a past-due federal student loan, and some other delinquencies, such as cell-phone debts and medical debts. I conclude that Applicant's passing reference to current debts on his e-QIP was not a sufficient disclosure of his financial delinquencies.

I find further that Applicant knew enough about the status of his child support debts in September 2017 (involving two children, with two different women) that he knew and should have known that he had a duty to report those debts at the very least. AG ¶ 16(a) applies. It is not established as to the other debts alleged.

AG ¶ 17 sets forth the applicable mitigating conditions under Guideline E:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Falsification of a security clearance application is a serious matter. It goes to the heart of an applicant's eligibility for a clearance. Once established, it is not considered minor, and almost by definition casts doubt on an individual's reliability, and good judgment. AG ¶ 17(c) does not apply.

In Applicant's first background interview, he was asked whether, in the past seven years, he was delinquent on alimony or child support. He answered "Yes," and did so before being confronted with full evidence of his debts. (GE 2 at 6) Two days later, when his interview resumed, he provided several documents related to his child support obligations. Those documents are not in evidence, but the fact that they are referenced in GE 2 is enough to show Applicant's intent in bringing the matter to the Government's attention. AG ¶ 17(a) applies.

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 AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

I credit Applicant's military service, doubtless in difficult circumstances. He is a disabled veteran, who clearly values service to the nation and its interests. I also credit Applicant's whole person evidence, as provided by the several witnesses he presented.

However, Applicant has a long history of failing to live up to his family and fiduciary duties to his children and their mothers. Most of his debts are child support-related. Child support is a profoundly important fiduciary parental duty, and the fact that Applicant has ongoing, even significantly increasing child-support debt has a direct bearing on his eligibility for a position of public trust or a security clearance. Applicant rebutted or mitigated personal conduct trustworthiness concerns. He has made some efforts to resolve his child support debts but they are too large to be considered mitigated. He was also given the opportunity to show documentation of resolution of his other debts and did not do so. Thus, doubt over the status of those debts remains as well. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a position of public trust. For all these reasons, I conclude Applicant mitigated personal conduct trustworthiness concerns, but did not provide sufficient evidence to mitigate financial considerations trustworthiness concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraphs 2.a-2.b:

For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to sensitive information. Eligibility for access to sensitive information is denied.

Braden M. Murphy
Administrative Judge