



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



In the matter of:)
)
) ISCR Case No. 20-02313
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: J. Cathryne Watson, Esq.

10/14/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 19, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct) and Guideline F (financial considerations). The action was taken 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), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on May 9, 2021 (Answer), and he requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 30, 2021, and reassigned to me on December 14, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 15, 2021, scheduling the hearing for January 11, 2022. On December 24, 2021, Applicant requested a continuance of the hearing so that he could obtain counsel. Department

Counsel objected on the grounds that Applicant had ample opportunity to obtain counsel and requested a continuance just two weeks before the hearing. I granted Applicant's request and cancelled the hearing on January 4, 2022. Applicant retained counsel on January 13, 2022. DOHA issued another notice of hearing on February 25, 2022, re-scheduling the hearing for March 24, 2022. I convened the hearing as re-scheduled.

At the hearing, Government Exhibits (GE) 1 through 8 and Applicant's Exhibit (AE) A were admitted without objection. Applicant testified and called three witnesses; one of the three witnesses testified telephonically. At Applicant's request, I kept the record open until April 7, 2022, for additional documentation. By that date, Applicant submitted documentation that I marked as AE B through P and admitted without objection. DOHA received the hearing transcript (Tr.) on April 4, 2022.

SOR Amendment

At the hearing, I *sua sponte* amended the SOR, pursuant to ¶ E3.1.17 of the Directive, to correct an error in the SOR. The SOR erroneously contained two allegations numbered as SOR ¶ 2.n. I amended the second allegation numbered as SOR ¶ 2.n to SOR ¶ 2.o, and I amended the allegation previously numbered as SOR ¶ 2.o to SOR ¶ 2.p. (Tr. at 208)

Findings of Fact

Applicant admitted SOR ¶¶ 1.a and 2.a through 2.p, and he denied SOR ¶¶ 1.b. He is 62 years old. He married in 1981, separated in 1994, divorced in 2020, and remarried in January 2021. He has three adult children. He earned a bachelor's degree in 1982 and a master's degree in 1986. (Answer; Tr. at 19-20, 23, 69-70, 80, 84, 86, 94-103, 187; GE 1, 2, 3, 8)

Applicant served honorably in the U.S. military from December 1982 to February 1996. He then worked for another government agency (AGA 1) for 20 years, from April 1996 until he retired in October 2016. He was unemployed from October 2016 to January 2017, and March 2018 to September 2019. As of the date of the hearing and since September 2019, he was the deputy director of security for a mixed community development. In March 2018, he received an offer, contingent on obtaining a security clearance, to work as an analyst for a DOD contractor. He was granted a security clearance by AGA 1 in April 1996. (Answer; Tr. at 6, 19-23, 65-66, 72-75, 93-94, 133-139; GE 1, 2, 3, 4)

The SOR alleged the following personal conduct security concerns: (1) in approximately February 2010, while employed as an acting unit chief with AGA 1, Applicant was investigated for engaging in unprofessional conduct on duty with a female support employee (F1); the allegations were substantiated; and Applicant received a 20-day suspension (SOR ¶ 1.a); and (2) in approximately September 2016, while employed by AGA 1 and assigned overseas, Applicant was investigated for allowing a non-AGA 1 employee (F2) to drive an AGA 1-issued vehicle, behaving in an inappropriate and offensive manner towards F2 in the form of an unwelcomed sexual advance, and lacking

candor when questioned about the incident and in his signed sworn statement during a disciplinary inquiry; the allegations were substantiated; and Applicant was allowed to voluntarily retire from AGA 1 (SOR ¶ 1.b).

The SOR also alleged the following financial considerations security concerns: (1) Applicant petitioned for Chapter 7 bankruptcy in approximately October 2020, and his petition was pending as of the date of the SOR (SOR ¶ 2.a); (2) he had 12 delinquent consumer debts totaling \$50,329 (SOR ¶¶ 2.b, 2.d, 2.e, 2.g, and 2.j - 2.p); (3) he had three delinquent medical debts totaling \$5,772 (SOR ¶¶ 2.f, 2.h, 2.i); and (4) he was indebted to the IRS for \$1,000 in delinquent federal taxes for tax year (TY) 2017 (¶ 2.c).

In addition to Applicant's admissions to SOR ¶¶ 1.a and 2.a through 2.p in his Answer, the personal conduct allegations are established by AGA 1 records. The financial considerations allegations are established by his admissions in security clearance applications from February 2017 (SCA 1) and May 2018 (SCA 2), in his February 2021 response to interrogatories, and during background interviews from November 2018 and December 2018, as well as by bankruptcy court records and three credit reports from 2018, 2019, and 2020. (Answer; GE 1-8)

Personal Conduct

AGA 1 records reflect that in approximately February 2010, while employed as an acting unit chief, Applicant "dropped several dollar bills down the shirt of [F1] while she was at her desk." As a result of Applicant's unprofessional on-duty conduct, AGA 1 suspended Applicant for 20 days without pay, and ordered him to obtain counseling from Human Resources on proper office behavior. This was Applicant's first disciplinary incident at AGA 1, and his AGA 1 security clearance was not suspended or revoked as a result. (Tr. at 23-31, 103-117; GE 4)

Applicant denied any malicious intent. He testified that he had been working late over a period of several months, and on one such night at approximately 9:00 pm, he encountered F1 sitting at her desk with a cake on the table in front of her. F1 was a secretary, with whom he had solely a professional relationship, and he spoke with her on an almost daily basis for the preceding five to six months. He described F1 as "younger than my youngest grandchild at the time." When he learned from F1 that it was her birthday cake, he engaged in a southern tradition, familiar to him, called "pinning." He explained that when a person has a birthday, "we take a pin and we pin dollar bills on their collar. And everybody would do that. So you dress them in dollar bills as good luck." (Answer; Tr. at 23-31, 103-117)

Applicant stated:

So I didn't have a pin and I reached over -- I said if you don't mind, I don't have a pin, but here. It was about five or six singles. I said tomorrow morning buy yourself lunch on me because lunch is only about \$3 or \$4. And I took the -- Ma'am, I took the dollars and she had on a -- she had on a sweater and she had on a blouse underneath. And I took -- I took the dollars and I

tucked it in her sweater, not touching her skin. And I told her to buy herself lunch the next day. And I walked out.

(Tr. at 26)

Applicant testified that he subsequently saw F1 for three weeks “and we spoke as we normally did,” until he was called into an office and told that he was being investigated for the above-described incident. He testified that he subsequently talked to F1, and F1 told him “yes, when you did it, I was offended.” He testified that he apologized to F1, told her he “didn’t mean anything by it” and “didn’t mean to offend [her],” and she responded by telling him that he was forgiven. He testified that he learned, years later, that F1 had been dating the “current Deputy Director” of AGA 1. Applicant testified that this individual did not like Applicant and was not satisfied unless Applicant was punished for this incident, despite F1’s acceptance of Applicant’s apology. (Answer; Tr. at 23-31, 103-117)

AGA 1’s suspension was upheld on appeal. Applicant testified that he hired an attorney and filed a lawsuit against AGA 1, alleging that AGA 1 punished him harsher for this incident than other AGA 1 employees who had committed more egregious acts. Applicant testified that AGA 1 settled this lawsuit in approximately 2012 and paid him \$50,000, of which \$41,000 went to his attorney’s fees. He did not provide documentation to corroborate his claims. He acknowledged that F1 never gave him any indication that it was permissible for him to touch her, and he should have known better. He testified that he pinned her “off the cuff,” and realized that it was unwise for him to have done so. He intended to never engage in this behavior again. (Answer; Tr. at 23-31, 103-117)

AGA 1 records also reflect that in approximately January 2016, while employed by AGA 1 and assigned overseas, Applicant allowed F2 to drive an AGA 1-issued vehicle, behaved in an inappropriate and offensive manner towards F2 in the form of an unwelcomed sexual advance, and lacked candor when questioned about the incident and in his signed sworn statement during a disciplinary inquiry. Consequently, AGA 1 proposed Applicant for dismissal in August 2016; Applicant voluntarily retired in September 2016; and the disciplinary inquiry closed based on Applicant’s retirement. This was Applicant’s second disciplinary incident at AGA 1, and his AGA 1 security clearance was again not suspended or revoked as a result. (Tr. at 29-66, 117-133; GE 4)

Applicant admitted only to allowing F2 to drive a vehicle, but he denied knowing that it was an AGA 1-issued vehicle. He also denied that he behaved in an inappropriate and offensive manner towards F2 in the form of an unwelcomed sexual advance, and that he lacked candor when questioned about the incident and in his signed sworn statement during a disciplinary inquiry. He testified that AGA 1 placed him on an overseas assignment in 2015, after the individual in charge (BOSS) personally asked him for his assistance due to being understaffed. During the incident in question, in October 2015, BOSS was out of the country. (Answer; Tr. at 29-66, 117-133; GE 3)

On that morning, Applicant testified that his supervisor (SUP), who was the acting BOSS, asked him to drive her daughter, F2, home after an AGA 1 function that evening, because SUP would be with her spouse celebrating their anniversary. He testified that

SUP provided him with a car, which he believed was an AGA 2-issued car. He testified that F2 was around 24 or 25 years old at the time, was an AGA 2 employee, and he had briefly met F2 one week prior when SUP had him over for dinner. At the conclusion of the AGA 1 function, at approximately 9:00 pm, he acquiesced to F2's request to grab a quick bite to eat. He testified that F2 was not ready to go home and he had also not eaten since mid-day, but he insisted to F2 that he would have to drive her home as soon as they finished eating. (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant permitted F2 to drive the car to a restaurant she liked. He testified that he did so because he had mistakenly left his glasses on his desk and could not drive without them at night; F2 was more familiar with the area than he was, with the exception of the route he knew for how to drive her directly back home from the venue where the function was held that evening; he had not seen F2 consume any alcohol that evening, and F2 told him she had not consumed any alcohol when he asked her if she had; and he thought it was permissible since he believed the car was AGA 2-issued and F2 was an AGA 2 employee. He testified that the car's license plate said "[AGA 2]" and "[BOSS]" in small print underneath it, and that he had never been briefed on the policy of the car. (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant testified that F2 consumed two beers at the first restaurant, and told him before their food arrived that she was ready to leave because she did not like the restaurant's menu. He stated that he has never consumed alcohol. He testified that F2 became belligerent when F2 attempted to leave the restaurant with a beer in her hand, and the waiter told F2 that she could not take an open container out of the restaurant. He testified, "[F2] snarls at [the waiter] and then [F2] gives it back -- after [F2] pours the rest of the beer on the ground and gives [the waiter] back the glass." (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant testified that after he witnessed F2 consume alcohol at the first restaurant, he drove the car for the remainder of the night. He testified that as he was driving F2 home, he stopped at a second restaurant at her request. He testified that the restaurant was closing, and F2 burst through the door to go to the restroom. He stated, "And I know I've got something on my hand now. I have a problem . . ." When F2 returned to the car, he told her he was taking her home because it was approximately 10:00 pm and it was getting late. He testified that he asked F2 to call SUP, but she refused and he did not have SUP's phone number. (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant testified that he stopped at a third restaurant, at F2's request. He testified that he insisted to F2 that he had to take her home because it was late, but F2 persisted that "we're not going to take long. This won't take long. We'll grab something to eat and then we'll go." He testified that when they got inside the restaurant, F2 began consuming alcohol. He testified that he got upset because "[F2] starts telling me about her sexual fantasies. And [F2]'s telling me about all the boyfriends she has at [AGA 2] . . ." He testified that she stopped when he told her, "I don't want to hear [about] your personal life. I said that's too much -- it's TMI -- too much information." He testified that F2 continued to consume alcohol and became more verbal about her "sexual proclivities," and "what she was getting [at], she was building up toward me." He testified that he told

F2 to stop, he walked out, and he told F2 he would meet her at the car. After he waited at the car for 20 minutes, he returned inside the restaurant and told F2 he had to take her home. (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant testified that as he was about to drive into the area where F2 lived, F2 wanted to go to a fourth restaurant that everyone went to because of its close vicinity to AGA 2 and where everyone lived. He stated, "And that was a fatal mistake that I made because that's where it all went bad." He testified that inside the fourth restaurant, F2 told him about how much she loved pornography, and he suggested that she had an addiction for which she should seek counseling. He testified that F2 "got angry. And at that point, everything turned." He testified that he went to the car and waited for F2, and when he went back inside the restaurant, F2 was "really inebriated" and started touching him. He testified that he asked F2 to stop and told F2 that if she did not stop, he would leave. He testified that he asked F2 to call SUP, and when she did not, he took F2's phone and retrieved a number from it, called SUP on his phone, and had F2 talk to SUP. (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant stated that it was approximately 12:00 am when he returned to the car and waited for F2. He testified that F2 came to the car at approximately 2:00 am, and "she was sloppy drunk." He testified that F2 tried to touch him as he drove her home. He stated, "And when she tried to touch me, I jerked my head and I hit my head on the window on the driver's side of the car." He testified that when he got to F2 and SUP's house, F2 let herself out, he waited for her to get inside the house, and then he drove the car to his home because it was late. He drove the car back to SUP's home the next morning. (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant acknowledged that he lost control and exercised poor judgment in letting F2 dictate where he could take her, rather than just bringing her home. He maintained that he never made any sexual advances toward F2. He stated:

I never made one inappropriate move or made any inappropriate comments to [F2]. What happened was, [F2] got drunk and she acted in a pattern -- in a way inconsistent with her professionalism and she was embarrassed. And we work in a small office. She was embarrassed to see me. She was embarrassed to talk to me after that. She lied and reversed everything and put it on me in that I was drinking and that I made inappropriate comments to her. And that I made -- I attempted to touch her inappropriately. Those were all lies.

(Tr. at 29-66, 117-133)

Applicant described F2 as manipulative. He testified that F2 told him that because SUP brought F2 overseas, SUP owed F2, and F2 could also get anything from her biological father and stepfather. He testified that F2 also had control over BOSS, through SUP. He testified that the following Thursday, SUP called him into her office and told him he had to return stateside, which he did the following night--in November 2015. He testified that BOSS, who was still out of the country, called him to ask what happened

and informed him that F2 filed a complaint with AGA 1 against him. He testified that F2 alleged that he let F2 drive an AGA 1-issued car under the influence of alcohol; he made inappropriate comments to her; and he made inappropriate contact with her. (Answer; Tr. at 29-66, 117-133; GE 3)

Applicant stated that AGA 1 “took the word of a drunk -- an inebriated lady over a seasoned [AGA 1 employee] . . . There was nobody there to corroborate our statements. And they said I lied.” He maintained that he told AGA 1 the truth during the disciplinary inquiry and he told AGA 1 that he would voluntarily submit to a polygraph to prove himself. He acknowledged that he faced a dilemma: whether he should fight F2’s claims through the disciplinary inquiry and risk dismissal from AGA 1, just as he was reaching his mandatory retirement age in April 2017. He stated that he knew the internal AGA 1 investigation would be a lengthy process; he was not liked by upper management at AGA 1, to include the individual who sought to punish him during the 2010 incident; he was having medical issues, as further discussed below; and his divorce had become contentious. He chose not to jeopardize his retirement and he elected to retire in May 2016. He continued to work until the end of September 2016, while holding his AGA 1 security clearance and in a classified facility. His security clearance lapsed after he was no longer employed by AGA 1. (Answer; Tr. at 29-67, 80-84, 117-133; GE 1, 2, 3, 4)

AGA 1 records reflect that in both the 2010 and 2015 incidents, Applicant refused to take any responsibility for his predatory actions; he continually blamed the victims; and he also potentially harmed AGA 1’s reputation because the victims trusted him based on his position within AGA 1. There is no evidence that Applicant had any other incidents of unprofessional conduct during his employment with AGA 1 or with any other employer. He testified that he was raised to live his life according to Christian principles, as his father was a deacon, his mother was a deaconess, and he also served as a deacon in his church. Although his philosophy was to try to always do good, he learned as a result of these incidents to keep a strictly professional interaction with females and to take caution to not allow himself to be in an environment with another female without a witness. (Tr. at 23, 147-148; GE 4)

Financial Considerations

Applicant previously petitioned for Chapter 7 bankruptcy in approximately 1997. He stated that after his ex-spouse got into a car accident, she signed an agreement with their insurance company, unbeknownst to him, that allowed the insurance company to recoup her related medical expenses of approximately \$27,000 from any settlement she received. When she did not follow through with the agreement, he faced a potential garnishment of his wages at AGA 1, as his ex-spouse never worked outside of the home. He stated that the garnishment order would have jeopardized his employment with AGA 1, so he elected to file bankruptcy. I will not consider Applicant’s 1997 Chapter 7 bankruptcy, or any other matter not alleged in the SOR, in evaluating the disqualifying conditions under this guideline; however, I will consider this information in my mitigation and whole-person analysis. (Tr. at 89-91)

In October 2020, Applicant again petitioned for Chapter 7 bankruptcy (SOR ¶ 2.a). He received a bankruptcy discharge in February 2021 of all of his listed liabilities, totaling \$57,410, which included the consumer and medical debts alleged in the SOR (SOR ¶¶ 2.b, 2.d - 2.p). He also received credit counseling through his bankruptcy case. (Answer; Tr. at 75-76, 79, 151-152; GE 3, 5, 6, 7, 8)

Applicant attributed his 2020 Chapter 7 bankruptcy and associated financial delinquencies to beginning in 2015, when he was diagnosed with prostate cancer and began incurring medical debt. After he retired from AGA 1, he was also unemployed from October 2016 to January 2017. Following his prostatectomy in 2017, he suffered from life-threatening medical problems and incurred more significant medical debt. He was unemployed again from March 2018 until September 2019. In 2018, when his then-spouse filed for divorce, he was initially ordered to pay her alimony of \$2,000 monthly and then \$1,500 monthly. He incurred alimony arrears totaling approximately \$52,000. He also financially assisted his daughter, after her spouse left her and she became a struggling single mother. He stated in SCA 1 that he was working with a credit repair company to dispute inaccuracies on his credit reports. (Answer; Tr. at 66-75, 89, 92, 94-103, 139-140, 146-147; GE 1, 2, 3; AE A)

SOR ¶ 2.b is for \$24,300 in alimony arrears. Applicant testified that the U.S. Office of Personnel Management (OPM) issued a check out of his AGA 1 retirement pay to his ex-spouse for \$39,000 in 2020, when the divorce was finalized, and that he was re-paying OPM through a three-year repayment plan of \$805 monthly. He also testified that the balance of his alimony arrears, after OPM's issuance of a check to his ex-spouse, was approximately \$13,000. As of the date of the hearing, he testified that he also continued to pay his ex-spouse court-ordered alimony of half of his AGA 1 retirement pay, or \$2,000 monthly, and he intended to continue to abide by the court's alimony order. (Tr. at 69-72, 78, 140-144; AE M, N)

Documentation reflects that as of May 2021, the balance of his alimony arrears was \$15,845. Documentation also reflects that Applicant made 12 payments of \$100, approximately once monthly between June 2021 and March 2022, to his ex-spouse in an effort to resolve his alimony arrearage. (Tr. at 69-72, 78, 140-144; AE M, N)

SOR ¶ 2.c is for \$1,000 in delinquent federal taxes for TY 2017. Applicant admitted this debt in his Answer, and he testified that he paid this debt. He did not provide documentation to corroborate his claim of payment. Documentation reflects that Applicant filed his federal income tax returns for TY 2018, 2019, 2020, and 2021 in March 2022; he owes \$6,046, \$2,905, and \$3,848 in federal taxes for TY 2018, 2019, and 2020, respectively; he requested payment plans with the Internal Revenue Service (IRS) of \$75 monthly for each delinquent tax year to resolve his outstanding federal taxes for TY 2018, 2019, and 2020; and he was due a \$4,093 federal refund for TY 2021. (Answer; Tr. at 76-79, 101, 144-146, 148; AE B, C, D, E, H, K)

Applicant attributed his outstanding federal taxes for TY 2018, 2019, and 2020, in part, to a \$100,000 withdrawal he made when he cashed out his 401(k) retirement account after his ex-spouse filed for divorce in 2018. He testified that he was paying the

IRS approximately \$300 monthly to resolve his outstanding federal taxes for TY 2018, 2019, and 2020, and his federal refund of \$4,000 for TY 2021 would also be applied to his outstanding federal taxes. He did not provide documentation to corroborate his claims of payment towards his outstanding federal taxes. (Answer; Tr. at 76-79, 101, 144-146, 148; AE B, C, D, E, H, K)

Documentation also reflects that Applicant filed his state income tax returns for TY 2019, 2020, and 2021 in March 2022, at the same time he filed his federal income tax returns for the same tax years; he owes the state tax authority \$3,232 and \$1,942 in state taxes for TY 2019 and 2020, respectively; he requested payment plans with the state tax authority of \$100 monthly and \$75 monthly, to resolve his outstanding state taxes for TY 2019 and 2020, respectively; and he was due a state refund of \$334 for TY 2021. He attributed these outstanding state taxes to the state tax authority's failure to tax his AGA 1 retirement pay. He stated that he did not correct this error to his AGA 1 retirement pay and instead planned to pay the state tax authority when he filed his state income tax returns. He stated that he was paying \$150 monthly towards these outstanding state taxes. He did not provide documentation to corroborate his claims of payment towards his outstanding state taxes. (Answer; Tr. at 76-79, 101, 144-146, 148; AE F, G, I, J, L)

SOR ¶ 2.d was for a \$2,772 cellular account in collection. Applicant indicated during his 2018 background interviews that he planned to pay this debt. This debt was discharged in his 2020 Chapter 7 bankruptcy. (Tr. at 86; GE 3)

SOR ¶¶ 2.e, 2.o, and 2.p were for past-due car rental debts of \$500, \$897, and \$694. Applicant testified that these debts were for damages claimed by the rental car agencies after he returned the rental cars. He indicated, during his November 2018 background interview, that SOR ¶ 2.o was a bill from his insurance after a tractor trailer ran him off the road when he was driving to visit his daughter. These debts were discharged in his 2020 Chapter 7 bankruptcy. (Tr. at 86-87; GE 3)

SOR ¶¶ 2.f, 2.g, 2.h, 2.i are past-due medical expenses for \$960, \$2,272, \$4,462, and \$350, respectively. These debts were discharged in Applicant's 2020 Chapter 7 bankruptcy. (Tr. at 87-88; GE 2)

SOR ¶ 2.j was for a \$7,900 past-due debt with a family law firm. Applicant stated that this was for his remaining balance for his divorce lawyer. This debt was discharged in his 2020 Chapter 7 bankruptcy. (Tr. at 88)

SOR ¶ 2.k was for a \$2,352 past-due credit card. Applicant stated in SCA 2 that he would make a lump-sum payment to bring this account current, and thereafter make regular monthly payments. He indicated during his 2018 background interviews that he was making monthly payments towards this debt. This debt was discharged in his 2020 Chapter 7 bankruptcy. (Tr. at 88; GE 2, 3)

SOR ¶ 2.l was for a \$7,104 past-due credit card. Applicant stated in SCA 2 that he unsuccessfully attempted to work with the creditor to "re[structure] payments to bring the account current." He indicated during his 2018 background interviews that he was making

monthly payments towards this debt. This debt was discharged in his 2020 Chapter 7 bankruptcy. (Tr. at 89; GE 2, 3)

SOR ¶ 2.m was for a \$1,176 past-due cable service account. Applicant testified that he was unaware this account was delinquent. This debt was discharged in his 2020 Chapter 7 bankruptcy. (Tr. at 91)

SOR ¶ 2.n was for a \$362 internet and cable service account in collection. Applicant stated in SCA 2 that he would pay this debt by May 2018. This debt was discharged in his 2020 Chapter 7 bankruptcy. (Tr. at 91-92; GE 2)

Applicant has earned \$69,000 annually since September 2019. He also receives approximately \$400 monthly from his AGA 1 retirement pay, as he testified that \$2,000 is allotted for his alimony payments to his ex-spouse and approximately \$1,600 is allotted to OPM, as previously discussed. He testified that he has an accountant assist him with filing his income tax returns. He endeavored to become a more contributing member of his household, and he desired to return to his passion of serving his country in the national security field. (Answer; Tr. at 70-73, 78-86, 89, 103, 138-144, 195; GE 1, 2, 3; AE O, P)

Applicant's wife testified. She met Applicant in 2015. She stated that she was aware of the SOR allegations. She felt that the personal conduct security concerns were "very hard to believe," as she and Applicant are devout Christians with strong moral values, and although Applicant is a friendly person "who does not know any strangers," he is a professional with an unwavering devotion to country. She supported Applicant's decision to file Chapter 7 bankruptcy, as he incurred significant medical debt due to cancer and related life-threatening complications, and he went through a divorce. She was aware that Applicant owed alimony arrears and outstanding taxes, and stated that these obligations were Applicant's responsibility since he incurred them before their relationship commenced. She stated that she gave Applicant her tax attorney's information, so that Applicant could work on resolving his outstanding taxes. If necessary, she would loan him money to meet these obligations, with the understanding that he would have to repay her. (Tr. at 177-198; AE O, P)

Applicant's wife was the breadwinner during Applicant's periods of unemployment. She has worked for various DOD contractors since 2010, and she held a security clearance as of the date of the hearing. In March 2022, her employer awarded her a salary increase as a result of her valued performance, and she earned \$104,920 annually. She handled the household finances, and stated that they lived frugally and on a budget. She stated that they had approximately \$2,500 in savings as of the date of the hearing, and planned to purchase a home together in the future. (Tr. at 177-198; AE O, P)

One of the character witnesses (W1) that testified on Applicant's behalf served in the U.S. Army Special Forces for almost 30 years. W1 also worked for AGA 1 for 26 years, to include as Applicant's supervisor from 2002 to 2004, and retired from AGA 1 in December 2005. W1 also knew Applicant personally. W1 held Applicant in the highest regard. W1 stated that Applicant is "an extremely trustworthy individual, of the highest integrity and professionalism," with valuable interpersonal skills, and had no disciplinary

issues while under his supervision. W1 testified that he was aware of the personal conduct and financial considerations security concerns, having read only the SOR and Answer. W1 described Applicant as religious, honest, caring, polite, and modest. W1 testified that he felt that AGA 1 incompetently investigated the 2016 incident and Applicant was not treated fairly. Regarding the 2010 incident, W1 testified that Applicant may have exercised poor judgment in touching F1 without permission, but believed Applicant's intent was simply to recognize F1's birthday. W1 testified that he believed Applicant's punishment was harsher than appropriate, given the romantic connection between F1 and the senior AGA 1 executive. (Tr. at 154-171)

The remaining character witness (W2) that testified on Applicant's behalf was W1's spouse and a retired U.S. Army Colonel. W2 has known Applicant since 2005, through W1. W2 testified that Applicant "has come to our house for meals and other activities." W2 described Applicant as an honorable, devoted, professional, caring, and modest individual. A number of character references with long-standing professional and personal relationships with Applicant, to include a former AGA 1 supervisor as well as former AGA 1 colleagues, also attested to Applicant's trustworthiness, integrity, loyalty, and unquestionable character. (Tr. at 171-177; AE A)

Policies

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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 national security eligibility will be resolved in favor of the national security."

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of Exec. Or. 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the security 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 security concern and may be disqualifying. I considered the following relevant:

(b) deliberately providing false or misleading information . . . ;

(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 . . . ; and

(2) any disruptive, violent, or other inappropriate behavior.

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: . . . (1) engaging in activities which, if known, could affect the person’s personal, professional, or community standing.

While employed by AGA 1, Applicant engaged in unprofessional conduct on duty with F1 in 2010. In 2015, while employed by AGA 1 and assigned overseas, Applicant allowed F2 to drive an AGA 1-issued vehicle, behaved in an inappropriate and offensive manner towards F2 in the form of an unwelcomed sexual advance, and lacked candor when questioned about the incident and in his signed sworn statement during a disciplinary inquiry. I find that AG ¶¶ 16(b), 16(d)(1), 16(d)(2), and 16(e) apply.

AG ¶ 17 describes the following conditions that could mitigate the personal conduct security concerns:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant acknowledged that F1 never gave him any indication in 2010 that it was permissible for him to tuck several dollars in her sweater, regardless of his intent that he did so in the tradition of "pinning" in celebration of her birthday. He understood that he should have known better and realized that he acted unwisely. He intended to never engage in this behavior again.

However, in 2015, Applicant allowed F2 to drive an AGA 1-issued vehicle, behaved in an inappropriate and offensive manner towards F2 in the form of an unwelcomed sexual advance, and lacked candor when questioned about the incident and in his signed sworn statement during a disciplinary inquiry. Although disputed by Applicant, AGA 1

substantiated Applicant's conduct and consequently proposed him for dismissal. Applicant's opportunity to continue to dispute F2's allegations was through AGA 1's disciplinary inquiry, which ended when Applicant elected to and AGA 1 permitted him to retire. And yet, Applicant continues to place blame on F2 rather than take responsibility. His testimony was not credible in light of the record evidence, and his conduct continues to raise doubts about his reliability, trustworthiness, and judgment. AG ¶¶ 17(a), 17(b), 17(c), 17(d), 17(e), and 17(f) do not apply.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . .

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

- (a) inability to satisfy debts;
- (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 was unable to pay his debts, and he failed to pay his federal income tax of \$1,000 for TY 2017. The evidence is sufficient to raise AG ¶¶ 19(a), 19(c), and 19(f).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

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

(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.

Conditions beyond Applicant's control contributed to his financial problems. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Applicant received credit counseling and resolved SOR ¶¶ 2.d through 2.p through his 2021 Chapter 7 bankruptcy discharge. His previous petition for Chapter 7 bankruptcy was 23 years ago, and each of these bankruptcy cases occurred under circumstances that are unlikely to recur. In addition, Applicant has been working to resolve his alimony arrears since at least June 2021. I find that ¶¶ 20(a), 20(b), 20(c), and 20(d) apply to SOR ¶¶ 2.a, 2.b, and 2.d through 2.p, and I find those allegations in Applicant's favor.

Applicant's tax issues, however, are current, ongoing, and recent. He did not provide documentation to corroborate his claim that he paid his outstanding federal taxes of \$1,000 for TY 2017. In addition, he owes a total of approximately \$12,799 in federal taxes for TY 2018, 2019, and 2020, and \$5,194 in state taxes for TY 2019 and 2020. He did not provide documentation to corroborate his claims of payment, and there is no evidence that the IRS or the state tax authority approved his requested monthly payment plans of \$75 and \$175, respectively, to resolve his delinquent federal and state taxes. I find that Applicant's tax issues are not under control, and they continue to cast doubt on his judgment, trustworthiness, and reliability. AG ¶¶ 20(a), 20(b), 20(c), 20(d) and 20(g) are not established as to SOR ¶ 2.c.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to

which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I 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 E and F in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the personal conduct and financial considerations security concerns.

Formal Findings

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

| | |
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| Paragraph 1, Guideline E: Subparagraphs 1.a – 1.b: | AGAINST APPLICANT Against Applicant |
| Paragraph 2, Guideline F: Subparagraphs 2.a – 2.b: Subparagraph 2.c: Subparagraphs 2.d – 2.p: | AGAINST APPLICANT For Applicant Against Applicant For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge