



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



In the matter of:)
)
) ISCR Case No. 19-02806
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2023

Decision

MURPHY, Braden M., Administrative Judge:

The Government alleged security concerns under the guidelines for criminal conduct, financial considerations, and personal conduct. Applicant has resolved or is resolving his delinquencies, past-due taxes, and unfiled tax returns. Financial considerations security concerns are mitigated. Applicant’s indictment for felony child abuse was reduced to a misdemeanor. He completed his probation period, and the charge was then dismissed. The offense is isolated and dated, and not likely to recur. Criminal conduct security concerns are mitigated. Personal conduct security concerns alleging deliberate failure to disclose tax issues on his security clearance application are not established. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 15, 2018. On July 10, 2020, and again on December 15, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct), Guideline F (financial considerations), and Guideline E (personal conduct).

The CAF issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective within DOD on June 8, 2017. (Other than the dates of issuance, the two SORs are identical, so it is likely that the first SOR, dated July 15, 2020, was never processed. The December 2021 SOR was treated as the one at issue in the case). (Tr. 29)

In an undated response, Applicant answered the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was forwarded to the DOHA hearing office on March 8, 2022, and assigned to me on October 5, 2022. On November 2, 2022, DOHA issued a notice scheduling the hearing for November 30, 2022.

Applicant's hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1 through 8, which I admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. After the hearing, I held the record open to allow him the opportunity to submit additional documents, which he did. On December 15, 2022, he provided an e-mail (AE C), and various documents, which are marked as AE D through AE N, all of which I admitted without objection. DOHA received the hearing transcript (Tr.) on December 12, 2022. The record closed on December 15, 2022.

Amendment to the SOR

Under Guideline E, the SOR alleged in SOR ¶ 3.a that Applicant deliberately failed to disclose certain information on his August 2018 SCA, in answer to:

“Section 26 – Financial Record: Taxes In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance.”

The SOR continues, “[Applicant] answered, “No,” and thereby deliberately failed to disclose that information as set forth in subparagraph [sic] **2.a and 2.b**, above.” (Emphasis added)

In his SOR response, Applicant denied SOR ¶ 2.a, and provided a narrative answer that addressed his federal and state income taxes and tax returns for tax years (TY) 2017, 2018, and 2019. (Answer) However, the Guideline F debts at SOR ¶¶ 2.a and 2.b concern child support debt and a debt to a retailer, as discussed below. As such, they are not responsive to a question on an SCA about taxes.

The Government therefore moved to amend SOR ¶ 3.a by changing “**the information as set forth in subparagraph 2.a and 2.b, above**” to “**the information in subparagraphs 2.f and 2.g, above**,” since those allegations concern past-due tax

debts from TY 2016 and 2017. (Emphasis added) Applicant did not object to the motion, and it was granted. (Tr. 13-22)

Findings of Fact

Applicant admitted SOR ¶ 1.a. He denied SOR ¶¶ 2.a-2.g and 3.a, all with explanations. His admission to SOR ¶ 1.a is incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 32 years old. He and his wife married in 2014. They separated in June 2016. They have one child, a seven-year-old boy, who lives with his mother in another state. Applicant graduated from high school in 2009. In 2010, he enlisted in the Army, serving on active duty for about six years followed by two years in the Reserve. He served in the signal corps and held a clearance. He was discharged honorably in 2018 as a specialist (E-4). He works as a video technician for a contractor on a U.S. military base. He has worked there since leaving the Army in 2016. (Tr. 24, 41-45, 83; GE 1)

Applicant's son was born in December 2015. Applicant testified that he had to take his son to the hospital emergency room several times. The first ER visit was after the boy was spitting up blood. The doctor diagnosed him with having GERD (gastroesophageal reflux disease). A second ER visit was similar. A third time was after the baby would not eat. Applicant said an examination of the baby found "brain injuries," so the police became involved, and the child was placed in foster care. (Tr. 47-48, 87-88)

In his background interview, Applicant discussed the three incidents: once when his son was injured after falling off a love seat, an occasion when both parents were present. A second incident occurred when Applicant discovered his son had vomited in bed; and the third incident occurred when his son fell out of a swing seat, where Applicant had placed him while Applicant was taking a shower. After the third incident, doctors diagnosed the boy with broken ribs, bleeding in the brain, and blood in his retina. The boy remained in the hospital's custody until he was placed in foster care. (Tr. 86-88; GE 2 at 9)

The Government's documents reflect that Applicant was indicted by a grand jury and charged with felony child abuse with the offense date between December 29, 2015, and May 28, 2016. In August 2016, Applicant was arrested in state 1 and charged with felony child abuse. (GE 3) The Government's documents also include a motion filed by the state prosecutor seeking to exclude from evidence at trial a finding by social workers of the county department of social services (DSS) that, while allegations for both parents were unfounded, abuse of the child was concluded to have occurred, "by an unknown abuser." (GE 3 at 20) The DSS report itself is not in evidence here.

In July 2018, Applicant pled no contest to a reduced charge of misdemeanor trespassing. He was sentenced to a maximum of 12 months in jail and a \$2,500 fine, with imposition of the sentence suspended for two years (“two-year SIS”) on the condition of general good behavior. He was not allowed unsupervised contact with the victim for two years. The case was dismissed on July 10, 2020, following Applicant’s successful completion of the good behavior period. (SOR ¶ 1.a) (GE 3; Tr. 48-50, 95-96, 98) (The portion of SOR ¶ 1.a alleging that Applicant was “sentenced to two years suspended ...” is erroneous). The record does not contain a police report or any evidence from law enforcement about the circumstances that led to the indictment beyond what Applicant reported in his background interview and testimony.

Applicant maintains that he was not at fault and did not cause his son’s injuries. He does not believe his wife caused them either, except perhaps when the son fell off the love seat. Applicant does not believe his wife did anything intentionally to harm him. He denied any anger management issues at the time, or financial problems, or getting physically violent with his wife or child. He did acknowledge some neglect. He denied any subsequent incidents involving violence or anger management. (Tr. 88-94) He has not been involved in any subsequent criminal offenses. (Tr. 100)

Applicant took anger management classes and 10 weeks of parenting classes, which were mandatory to resume custody. He and the boy’s mother also saw a child psychologist, and Applicant and his son also attended without her. (Tr. 93, 96-100) Applicant explained in his background interview that he once foster care ended, his son was placed in the care of the boy’s mother. (GE 2 at 11)

The boy lives in another state with his mother. They moved there in July 2020. Applicant said he last saw his son in November 2022, a few weeks before the hearing, when he was visiting with Applicant’s parents. Before then, he saw the boy in July 2022 when Applicant flew down to see his son and he took him to an amusement park out of state, with the mother’s permission. He is not subject to any visitation orders from a court. (Tr. 50-52)

The financial security concerns in the SOR relate to delinquent child support, past-due federal income taxes and other delinquent debts, and unfiled federal and state income tax returns. He denied all the Guideline F allegations in his answer, asserting that his debts either had been, or were being, paid, and that his overdue tax returns had been filed. The debts are established by credit reports from November 2018, August 2019, and February 2022. (GE 6, 7, 8)

Applicant explained in his interview that his debts accrued for several reasons, among them a drop in pay after he left the Army, renting a large apartment, paying child support costs while their son was in foster care, and child support to the boy’s mother after she assumed custody. (GE 2 at 11)

SOR ¶ 1.a (\$5,577) is a child support arrearage, as of August 2019. (GE 6, GE 7) Applicant asserted that the account has been paid in full. A February 2022 credit report

shows no balance and that the account is in “pays as agreed” status.” (GE 5) The arrearage accrued during the period his son was in foster care, and Applicant was responsible for providing financial support to the state for his son. (Tr. 80) He pays \$350 in child support every two weeks, directly to the boy’s mother on a voluntary basis. (Tr. 53, 79) The arrearage is resolved and his child support payments are current.

SOR ¶ 1.b (\$2,458) is an account placed for collection by a military retailer. (GE 6, GE 7) Applicant asserted in his answer that the balance is \$432 and he is paying \$88 every two weeks. A February 2022 credit report shows a balance of \$370. (GE 5) The account is now closed and paid in full. (Tr. 81; AE A at 10)

SOR ¶¶ 1.c (\$1,452) and 1.d (\$830) are cell phone accounts placed for collection. (GE 7 at 8) Applicant said they are paid in full. (Answer. Tr. 81-82) He was unable to provide documentation but noted in a post-hearing e-mail that they are no longer listed on his credit report. (AE C)

SOR ¶ 1.e alleges that Applicant failed to file his federal and state 1 income tax returns for TY 2017 and 2018. He filed his TY 2017 federal and state returns in June 2020, when he filed his TY 2019 federal and state returns. (AE J, AE K) He used a well-known tax preparation software program. In 2018, he could not afford the filing fee, so he decided to mail the returns, which he then neglected to do. (Tr. 57) In 2019, when the software program reminded him that his prior tax returns were still unfiled, he contacted his parents’ tax accountant for assistance. She helped him prepare and file his late returns, and he has “been up to date ever since.” (Tr. 56-58)

SOR ¶ 1.f (\$4,500) concerns past-due federal income taxes for TY 2017. Applicant said he had a \$9,408 balance due for TY 2017 and about \$595 due for TY 2018 and was in a 150-month repayment plan. (GE 2) He said he entered into the payment plan with the IRS in September 2020 and has been making regular payments since then. (Tr. 59, 67, 85) As of the hearing date, he owed \$6,523 on his 2017 federal taxes and \$632 for TY 2018, for a total of \$7,155 remaining. (AE B; AE H, AE I; Tr. 58-59)

SOR ¶ 1.g (\$3,803) concerns past due federal income taxes for TY 2016. (GE 2, GE 4) As of January 2021, he owed \$1,947 in taxes, penalties, and interest. (AE F) As of December 2022, the debt has been paid. (AE G)

Applicant filed his TY 2020 federal and state tax returns on May 15, 2021 (a date I consider timely during the COVID pandemic). He was to receive a federal refund of \$1,828, and he owed \$73 in state taxes. (AE M) He filed his TY 2021 federal and state tax returns on April 3, 2022. He was to receive a federal refund of \$1,889, and he owed \$54 in state taxes. (AE N) He is up to date on his tax filings, and he owes no past-due state taxes. (Tr. 56, 59-60, 77)

Applicant participated in credit counseling in the Army but not since then. He keeps a budget to track income and expenses. (Tr. 101-202) A November 2022 credit

report shows no delinquencies. (AE A) A mid-December 2022 pay stub reflects a year-to-date 2022 income of about \$82,300. (AE E) Applicant's current annual salary is \$82,000. He also receives about \$6,000 from the VA due to his disability for a total income of about \$88,000. (Tr. 82)

A January 2022 disability rating decision from the Department of Veterans Affairs (VA) reflects a 30% disability rating for degenerative arthritis (20%) and tinnitus (10%) (AE D) Applicant earns about \$4,800 per month, after taxes, including his disability pay. He said he has about \$800 or \$900 left over each month. He drives a 10-year-old car. (Tr. 83-84)

Applicant disclosed several delinquent debts on his SCA, including past-due child support. In the comments sections, he noted that he "attempted to enter the information about delinquent payments" and that he had "additional debtors owed," but was unable to obtain complete court and financial records. (GE 1 at 37, 40) He also disclosed that he was arrested on suspicion of felony neglect/abuse and that the charges were lowered to misdemeanor trespassing, to be dismissed in July 2020. (GE 1 at 31)

In SOR ¶ 3.a, as amended, the Government alleged that Applicant deliberately failed to disclose, on his August 2018 SCA, that he owed past-due taxes for TY 2016 and TY 2017, in answer to the following question:

Section 26 – Financial Record: Taxes In the past seven (7) years, have you failed to file or pay Federal, state, or other taxes when required by law or ordinance." (GE 1 at 37)

Applicant filed his 2016 federal tax return on time, on or about April 15, 2017. A 2020 IRS account transcript in the record shows he had past-due tax debt from that year (as alleged in SOR ¶ 1.g). (GE 4)

As previously noted, Applicant did not file his 2017 federal or state income tax returns until June 2020, and he still owes past-due federal taxes for that year (as alleged in SOR ¶ 1.f). However, the IRS account transcript for TY 2017 (AE H) shows that he filed an extension on April 15, 2018. That pushed the filing deadline to October 15, 2018 – a date after Applicant prepared his SCA in August 2018. Thus, when he prepared his SCA, his 2017 federal return was not yet late (though it would be later when he did not meet the October 2018 deadline). (AE H; Tr. 71-73) It also stands to reason that it was not yet established as of August 2018 that he owed taxes for 2017 (though he later did).

In answering the original SOR ¶ 3.a, Applicant denied the allegation of deliberate falsification. He said he filed (prepared) his 2017 tax return through the software program but had a dispute with his son's mother about claiming their son as a dependent. He then did not follow up and complete the filing (until 2020, as discussed). (Answer)

During his hearing testimony, Applicant explained that he was paying on his past-due 2016 taxes when he prepared his SCA, which he believed meant that he was no longer “in arrears” and did not have to disclose the debt. He also said he thought he had filed his 2017 tax return through the software program, but only learned later such was not the case. He said he did not intend to mislead the government when he prepared his SCA. (Tr. 61-65, 106-107) Applicant also acknowledged that he should have been more diligent in filling out the SCA. (Tr. 64-65, 109)

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 Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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.” 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 not drawn 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 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.

Analysis

Guideline J: Criminal Conduct

AG ¶ 30 details the security concern for criminal conduct:

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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.

In 2016, Applicant's newborn infant was taken to the hospital three times. The last time, he was found to have broken ribs, bleeding on the brain, and blood in his retina. Applicant was indicted in August 2016 on a charge of felony child abuse. In July 2018, he pled no contest to a reduced charge of misdemeanor trespassing. Imposition of a 12-month sentence was suspended, pending completion of a two-year probation term, which he completed in July 2020, and the charge was dismissed. AG ¶ 31(b) applies.

AG ¶ 32 sets forth the potentially applicable mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant does not dispute the charge or the fact that he pled no contest to the reduced misdemeanor, but he denies causing injury to his son. The police report is not in evidence, and the only explanations came from Applicant himself, in his background interview and at his hearing. The exact cause of his son's injuries has not been established by record evidence.

The charge of felony child abuse of a newborn infant is extremely serious, but it was not established whether the injuries occurred due to parental neglect, or actual physical abuse, or whether Applicant had any responsibility for the child's injuries. Applicant was indicted on a charge of felony child abuse but pled no contest to misdemeanor trespassing. A no contest plea establishes that Applicant acknowledges that evidence supports a finding of guilt, and he acknowledged being neglectful in the care of his son. Applicant took parenting classes for 10 weeks, as well as anger management classes. He completed the two-year period of good behavior in July 2020 and the charge was dismissed, now more than two and a half years ago. Applicant's son, now age seven, lives with his mother in another state, and Applicant is allowed to visit and to take his son out of state for entertainment. Despite the seriousness of the offense, it is also dated and isolated. This is the only offense on his record and Applicant's culpability has not been clearly established by record evidence. He has maintained gainful employment. AG ¶¶ 32(a) and 32(d) apply.

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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 handing and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 . . . annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant incurred various delinquent debts, including a child support arrearage, tax debts, and other debts, and he failed to file two years of federal and state income tax returns for several years. AG ¶¶ 19(a), 19(c), and 19(f) apply.

AG ¶ 20 sets forth conditions that could mitigate security concerns arising from financial difficulties. The following are potentially applicable in this case:

- (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;
- (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.

Applicant's child support arrearage is resolved, and he is current on his child support obligation. His other debts are resolved or are being resolved, and he has no other debts. Even though he is adhering to a repayment plan, his tax debts remain ongoing, so he does not get full credit under AG ¶ 20(a).

With the assistance of his parent's tax preparer, Applicant filed his overdue tax returns in June 2020, before the SOR was issued, and he has been on a repayment plan for his federal tax debt since about September 2020. His other debts are resolved. He has shown a good-faith effort to resolve his debts and tax issues. AG ¶¶ 20(c), (d), and (g) apply. He provided sufficient evidence to mitigate the financial security concerns.

Guideline E

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 proceedings. . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

As amended, SOR ¶ 3.a alleges that Applicant deliberately failed to disclose on his August 2018 SCA that he had past-due tax debt from tax years 2016 and 2017 (SOR ¶¶ 2.f and 2.g).

Applicant filed his 2016 federal tax return on time, but he had outstanding tax debt that was not fully paid until 2022. (AE G) Delinquent tax debt as to TY 2016, as of the time of the August 2018 SCA, is established.

Applicant filed an extension for his 2017 federal tax return. That moved the filing deadline to October 2018 – after he prepared his SCA. Thus, when he prepared his August 2018 SCA, his 2017 tax return was not late, and any unpaid taxes owed were not yet established (even if he was found to have owed taxes later). Thus, the Government's allegation of a delinquent tax debt for TY 2017, as of the time of the August 2018 SCA, is not established. Without delinquent tax debt established as a prerequisite, the related falsification is not established. This leaves only the tax debt for TY 2016.

Applicant disclosed several other debts on his SCA, including child support. He mentioned in two comments that he had delinquent debts but did not have enough information to provide specifics. He also disclosed his criminal offense, noting that he had been arrested on a felony charge, reduced to a misdemeanor.

Applicant denied the allegation of deliberate falsification as to SOR ¶ 3.a. Under these circumstances, I conclude that his omission of the fact that he owed past-due taxes for TY 2016 on his August 2018 SCA was not deliberate. AG ¶ 16(a) is not established, and SOR ¶ 3.a, as amended, is found for Applicant.

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 J, F, and E in my whole-person analysis.

Applicant has resolved most of his financial delinquencies and is keeping to an established repayment plan for his federal tax debt. Financial considerations security concerns are resolved. Personal conduct security concerns are not established. The allegation under Guideline J is extremely serious, in that it involves serious injuries to Applicant's infant son. There is no greater duty of care than the duty a parent owes to a child. Here, there is no dispute that the child was badly injured. What is not clear is what happened, or who was culpable. Applicant pled no contest to a reduced misdemeanor charge and acknowledged responsibility for neglect. He also completed his two-year period of good behavior without incident and the charge was dismissed in July 2020. There is no other instance of criminal behavior or family issues. He has taken anger management and parenting classes. He is allowed to visit his son and does so. I conclude that criminal conduct security concerns are mitigated. Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility for a security clearance.

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 J:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2: Guideline F:	FOR APPLICANT
Subparagraphs 2.a-2.g:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge