



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



In the matter of:)	
)	
)	ISCR Case No. 22-00571
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: Matthew Thomas, Esq.

09/25/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On June 10, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On August 25, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 3, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on July 21, 2023, scheduling the

hearing for August 24, 2023. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 16. Applicant objected to GE 4 and 5, the unauthenticated investigative summaries. The objections were sustained. There were no additional objections, and GE 1 through 3 and 6 through 16 were admitted in evidence. Applicant testified and offered Applicant Exhibits (AE) A through R. There were no objections, and they were admitted in evidence. The record was held open until September 7, 2023, to permit him an opportunity to provide additional documents he wanted considered. He offered AE S, which was admitted without objection. He also offered an unmarked document reflecting payment receipts. I have marked it as AE T. There was no objection, and it was admitted in evidence. No other documents were submitted, and the record closed. DOHA received the hearing transcript (Tr.) on September 12, 2023.

Procedural Matters

In accordance with DOD Directive 5220.6 the Government moved to amend the SOR to render it in conformity with the evidence admitted. The Government also moved to admit part of GE 4 that Applicant authenticated during testimony, specifically page 2 the last paragraph and page 3, the first paragraph. Applicant specifically testified that the paragraphs were accurate and a representation of his conversation with the government investigator. Applicant objected stating that the facts were already established on the record and therefore this information was cumulative and unnecessary to amend the SOR. In addition, Applicant objected to the amendment to the SOR. Applicant's objections were overruled. The Government's motions were granted. (Tr. 179-185) The SOR amendment is included in Hearing Exhibit I. The SOR was amended by adding the following allegation:

2.c You falsified material facts during a September 16, 2015, interview with an authorized investigator for the U.S. Department of Defense when you described the facts and circumstances from your NJP you received in February 2013. You failed to disclose the foreign contact from El Salvador that you believed was the mother of your child that you described in your testimony during your security clearance hearing on August 24, 2023.

The Government noted that the allegations in SOR ¶ 1.e is a duplicate of SOR ¶ 1.j and SOR ¶ 1.i is a duplicate of SOR ¶ 1.k.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a through 1.c, and essentially denied the allegations in SOR ¶¶ 1.d through 1.k, 2.a and 2.b, with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 49 years old. He served in the military from 1994 until he retired honorably in 2014 in the paygrade of E-7. He married in 1999. He has three children with his wife. He has three other children from relationships. A son was born in 2000. In 2001,

he fathered a daughter with another woman and later learned that he fathered a second daughter with her, born in 2003. He was not made aware until 2005 of the second daughter. He paid child support for the two children and when he learned of the third child, he was required to pay back child support owed from 2003 to 2005. He testified that all of his child support has been satisfied, and he no longer has any child support obligations since the children are now adults. (Tr. 27-28, 30-36, 157-160, GE 1, 2, 3)

Applicant earned a bachelor's degree in 2019 and a master's degree in 2020. He has been employed by federal contractors since January 2015. He reported a period of unemployment after his retirement from the military from November 2014 to January 2015. (Tr. 72, 156; GE 2, 3)

Applicant testified he deployed to a foreign country in 2007. While there, he had sexual intercourse with a foreign national four times, twice at an apartment and twice at a friend's residence. He testified that she was not a prostitute, and he never paid her money. He was married at the time. He did not report her as a foreign contact. He testified that he did not know his contact with her was considered a "foreign contact" and should have been reported. He testified prior to his deployment he had not been briefed on contacts with foreign nationals. (Tr. 32, 117-120, 123-124, 187)

In 2012, Applicant deployed again to the same country. He had a military member as a roommate at the hotel. They were staying at the same hotel he had stayed at during his 2007 deployment. One of the hotel staff recognized him and was aware he had a "relationship" with a woman when he was there in 2007 and inferred that he had fathered a child during his previous deployment. Applicant testified that he asked the hotel employee to provide him the woman's telephone number, which he did. He contacted the woman and they met at the hotel. He asked her to return and bring the child. He testified that he purchased a hotel room because his roommate was smoking in their room. She met him in his hotel room with her child. He determined he was not the father of the child. He ordered food through room service. They did not engage in sexual conduct during their 2012 meetings. The information about Applicant's rendezvous came to light when the Naval Criminal Investigative Service was investigating potential prostitution at the hotel. He testified that the investigation determined she was not a prostitute. (Tr. 37-44, 120-126)

In February 2013, Applicant went to a Uniform Code of Military Justice Article 15 nonjudicial proceeding (NJP) for violation of Article 92, failure to obey an order for wrongfully and knowingly having contact with a suspected prostitute in a foreign country and having a non-military guest in his hotel room. His punishment was forfeitures of pay for two months and 45 days of restriction. He was an E-7 at the time. (Tr. 37, 41-44)

In June 2015, Applicant completed a security clearance application (SCA). Section 15 requested he provide information about his military history. It specifically asked for the dates of service. Applicant responded to this inquiry with his active duty dates from "09/1994" to "10/2014." The SCA also asked him if he was discharged, which he responded "yes." It then asked for the details of his discharge, and he responded

“honorable.” Another question asked: “Provide other discharge type.” Applicant responded: “Retired with 20 years 1 month from active service.” This was information that was not repopulated. He reported he did not have any additional military service to report. The bold header labeled “**Discipline**” asked: **In the last 7 years**, have you been subjected to court martial or other disciplinary procedure under the Uniform Code of Military Justice (UCMJ), such as Article 15, Captain’s mast, Article 135 Court of Inquiry, etc.” Applicant responded “no.” (Tr. 47, 126-132; GE 1)

Applicant explained he did not disclose his NJP because the SCA repopulated his response of “no” from his previous SCA. He said he was in a “robotic” mode and missed answering this question correctly. He provided other new information as noted above, such as duty stations and his active-duty dates and characterization of his discharge. Applicant admitted that he did not disclose his NJP and said it was not intentional. I did not find Applicant credible. I find he deliberately failed to disclose his February 2013 NJP on his 2015 SCA. (Tr. 47; 126-132; GE 1)

Applicant testified that when he was interviewed by a government investigator in September 2015, he provided information about his 2013 NJP when the investigator specifically asked him about the details. He said he told the investigator that he did not disclose the NJP on his SCA due to an oversight. Applicant testified that he told the investigator that he was unaware that his roommate had three females in their hotel room for two parties. Applicant said he did not attend the parties. He was at work. He told the investigator that there was an investigation about the females in the hotel room he shared with a roommate, but they were not prostitutes. Having any guests while they were in a foreign country was prohibited. He said he was unaware of the party. He admitted at his hearing that he did not tell the investigator that he had met privately with a female foreign national whom he believed could potentially be the mother of his child. He rented a hotel room to meet with her, which was in violation of military orders. He met with her twice on two different days. Applicant’s testimony lacked candor and was not credible. I find he deliberately falsified and concealed material facts when he failed to provide accurate and honest information to the government investigator and did not disclose that he met privately with a female foreign national in a separate hotel room as he testified at his hearing. (Tr. 132-140; GE 1)

In 2003, Applicant was granted a conditional security clearance because of financial concerns. He was cautioned that future receipt of derogatory information or his failure to comply fully with the conditions of his clearance would be cause for immediate reconsideration. He was required to continue to pay his child support and arrearage, resolve any additional delinquent debts and remain current on his financial obligations. (GE 6)

In 2011, Applicant was again granted a conditional security clearance because of financial concerns. His 2011 conditional security determination stated:

It is imperative that you continue working with your creditors to establish payment plans on all of your delinquent accounts. You must also continue

to make full and timely payments to all creditors with the intent on becoming current on all accounts. Thereafter, maintain a stable and solvent financial status, ensuring all payments to creditors are accomplished in a regular and timely manner. (GE 7)

Applicant attributed his financial issues to never being properly educated about financial management or how credit worked. He also attributed it to his son coming to live with him in 2015. (Tr. 30; GE 6, 7)

Applicant filed Chapter 7 bankruptcy in April 2014. In July 2014, he had approximately \$82,000 of debt discharged. He explained he was getting ready to retire from the military and his wife had been working only sporadically. They wanted to save their house and get a reset on their finances. (Tr. 48; GE 10)

Applicant testified that after retiring from the military in October 2014, he was unable to get a job for about six to seven months. From 2015 to 2019, his wife worked sporadically, and they again struggled financially. He has a child who is a diabetic. He said his military medical coverage for retirees, Tricare, was expensive for her needs. He also had child support payments. He and his wife were also helping her mother who was struggling financially after her spouse passed away. In 2015, without prior notice, the mother of his son dropped him off with Applicant to care for him permanently. He testified that they got behind on their car payments. He also disclosed in his July 2020 and April 2021 SCAs that he went on a "family vacation [c]ruise in 2015 or 2016. Cozumel Mexico Carnival cruise line." (Tr. 48-51, 164; GE 2, 3)

Applicant testified that it was disruptive in 2015 when his son moved in with him and his family. His son was diagnosed with oppositional defiant disorder. He was frequently in trouble at school and was suspended and expelled three times from three different schools. He was breaking into cars and using marijuana. He would run away for three to four days at a time. Applicant was concerned about his conduct and the people he spent time with. His son was concerned there was a bounty on him. Applicant's son was shot in February 2020. He was shot a second time in June 2020 while waiting in line to apply for a job. He did not survive. The crime has not been solved. This tragic event impacted the whole family. (Tr. 59-63; AE R)

In July 2020, Applicant completed another SCA. He did not disclose any debts in collection, charged off, or if he had property voluntarily or involuntarily repossessed. He also did not disclose that in the past seven years if he had been delinquent more than 120 days on any debt and was currently more than 120 days delinquent on any debt, as required under Section 26. He testified that his failure to disclose this information was an oversight. The SCA also asked if in the past seven years he filed a petition for bankruptcy. He disclosed he had filed bankruptcy in 2012. (Tr. 140; GE 2)

As noted above Applicant's bankruptcy proceedings were in 2014. Under Section 26, a box for optional comments is provided. Applicant wrote:

All bills are currently on auto payment. Co-pays from wife losing job due to covid-19 and me being out of work March through July 2019 because of kidney surgery. 30% of my right kidney was removed because of a mass (non-cancerous). (GE 2)

In Applicant's April 2021 SCA, he did not disclose any debts in collection, charged off, or if he had property voluntarily or involuntarily repossessed. He also did not disclose that in the past seven years if he had been delinquent more than 120 days on any debt and was currently more than 120 days delinquent on any debt, as required under Section 26. He wrote the identical comments under the optional comment section, except he corrected the percentage of his kidney that was removed. He also disclosed he filed bankruptcy in 2012, which was incorrect. (Tr. 141-143; GE 3)

Applicant defaulted on his mortgage that went into foreclosure. (SOR ¶ 1.d). Applicant testified that the foreclosure was satisfied through his 2014 bankruptcy. He provided a document to show his mortgage payment on a house he purchased in January 2023 (\$459,000) is current. (Tr. 149-152; GE 12, 15; AE D)

SOR ¶ 1.k (\$17,888) (duplicate alleged in ¶ 1.i (\$21,386)) alleged a charged-off car loan. Applicant testified he purchased a vehicle in October 2016 after his son began living with him because they needed a bigger car. He said his wife was making the payments, so he was unaware when it became delinquent. He said he was confused about this debt because at the time he and his wife owned two vehicles of the same make, but different models. He admitted at one time he was behind on payments for both vehicles. He denied this debt (twice) in his answer to the SOR stating that he did not know the nature or origin of the debt alleged. The car was repossessed. He admitted he was aware of the repossession. He tried to reclaim the vehicle but was unsuccessful. He said he was unaware of the balance owed. He said he could not locate the debt. He explained his failure to disclose this repossession and charged-off debt on his SCA was due to an oversight. He said he answered the SOR the way he did because he was confused because it was alleged twice and he wanted to verify it. I did not find Applicant credible. In August 2023, Applicant made a payment arrangement with the creditor to resolve the debt by making monthly payments of \$825 from August 2023 through July 2025. He has made the first two monthly payments. (Tr. 50, 56, 75-81, 89-99, 153-155; GE 2; AE J, T)

The debt in SOR ¶ 1.e (\$6,193) (duplicate alleged ¶ 1.j (\$17,445)) is for a car purchased by Applicant in September 2017 and repossessed in 2019 for missed payments. Applicant testified that he spoke with customer service and made the delinquent payments to bring the debt current. It was brought current in 2019 and he was able to keep the vehicle. The credit reports reflect the debt as charged off. Applicant provided a receipt from the creditor from May 2022 showing the debt was paid. In his SOR answer, he denied this debt (twice) stating that he did not know the nature or origin of the debt alleged. He explained he thought that the debt was another account and he was paying the account for the repossessed vehicle. He said he answered the SOR the way he did because he was confused because it was alleged twice and he wanted to verify it. I did not find him credible. He did not disclose on his 2020 or 2021 SCA that this

vehicle was repossessed or that he was behind on his payments. (Tr. 51-52, 81-87, 89-98, 152-153; GE 14; AE G)

The debts in SOR ¶¶ 1.f (\$569), 1.g (\$426), and 1.h (\$221) are medical debts. Applicant testified that these were medical bills for a daughter who lives with her mother. The mother was supposed to pay the balance on the bills after Tricare paid the claim. She did not. He testified that he obtained the cumulative balance and paid it in July 2022. He provided documentary evidence that the debts are paid. (Tr. 51-55, 153; AE H, I)

Applicant purchased a 2019 car in 2022 for approximately \$48,000. He said he was in a place in his life that he decided to get a car that he always wanted. His monthly car payment is \$1,000. He is anticipating selling this vehicle to reduce his car payments and expedite paying his other car debt. (Tr. 56-58, 154-155)

Post-hearing, Applicant provided a copy of a budget that reflects his monthly income is \$6,984; VA disability is \$3,971; and military retirement is \$2,295, which totals a \$13,251 monthly income. He has approximately \$3,851 remaining at the end of the month after he pays his expenses. He provided proof that he no longer has child support obligations. His wife has not been employed since 2019 and has medical issues. He participated in consumer credit counseling through the Internet in August 2022 and the mandatory counseling for filing bankruptcy. He provided a copy of his July 2023 electric bill showing it was paid timely. He provided copies of his water bill from February 2023 to July 2023 showing he made timely payments and his monthly mortgage payment in August 2023 (\$4,282) was paid timely. (Tr. 144-149; AE A, B, C, E, F, S)

In January 2020, Applicant was arrested and charged with domestic battery involving the touching or striking of his spouse. His case was disposed of through a special Pretrial Diversion (PTD) program for veterans in May 2021 after he completed the program mandates. (Tr. 59; AE M)

Applicant testified that he got into an argument with his wife, he put his hands on her shoulders and she slapped them away. His daughter called a family member who called the police. There were no injuries, and Applicant denied he struck his wife. The PTD program required counseling with a doctor from the VA where they discussed communication, conflict resolution, and mindfulness. Applicant found it beneficial to his mental health and took responsibility for his conduct. He testified it helped him with his grief after the death of his son. The charge was dismissed. He testified that his marriage is good and two of his children are in college. They continue to work together as a family and communicate effectively. (Tr. 59, 64-69, 101-116, 154; AE K, L, M)

Applicant provided a certificate noting he has completed the requirements by the National Rifle Association and is designated a certified instructor to teach a basic course on pistols. He provided copies of his employee self-evaluation forms from April 2021-April 2022-overall rating 3.8; April 2022-April 2023-overall rating 3.8. He also provided a copy of his compensation package that reflect his annual base salary is \$90,896; commission is \$1,500 and bonus is \$500. (AE N, O)

Applicant provided character letters. A former supervisor stated he performed his duties well beyond what was expected of him. He is professional and diligent in following rules and security regulations. He coaches football and mentors young men. His current supervisor and friend attested to his exceptional character, dedication, and trustworthiness. His pastor noted he was responsible for youth ministry for a while. He did a good job, and the youth loved his leadership. He is a hard worker, smart, responsible, reliable, and trustworthy, and he is excelling financially since he has been managing his budget. Other character letters state he is honorable, efficient, dedicated, inspiring, caring, a leader, patient, intelligent, articulate, and dependable. He willingly gives of his time to help others. Several letters reflected on his success as a member of the military. Applicant also provided copies of his enlisted performance evaluations, awards, and commendations. (Tr. 69-71; AE P, Q, R)

Any derogatory information that was not alleged will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

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

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

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive

presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant has a long history of accumulating delinquent debts and being unable to pay them. He was granted a conditional clearance in 2003 and was required to resolve any additional delinquent debts and remain current on his financial obligations. In 2011, he was again granted a conditional security clearance advising him to establish payment plans on all of his delinquent accounts; continue to make full and timely payments to all creditors with the intent on becoming current on all accounts; and thereafter, maintain a stable and solvent financial status, ensuring all payments to creditors are accomplished in a regular and timely manner. In 2014, he filed Chapter 7 bankruptcy and had approximately \$82,000 of debt discharged. In 2016, he was again accumulating delinquent debts. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security 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, 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.

Since having his debts discharged in bankruptcy in 2014, Applicant has had two cars repossessed and eventually reclaimed one. The other was repossessed in 2020 and

he recently made a payment plan with the creditor to resolve the debt with monthly payments through July 2025. He satisfied medical bills that were not paid by the mother of his daughter. Applicant had a period of unemployment after his military retirement. He said he was out of work for several months due to surgery in 2019. His wife's work history is sporadic, and he was paying child support.

I have considered that currently Applicant has only one delinquent debt that remains unresolved. He is no longer paying child support. I have also considered that he took his family on a cruise during a period when he said he was having financial problems. He also purchased a vehicle in 2019, presumably when he was either unemployed or receiving reduced income, and he has monthly payments of \$1,000. The greatest concern is that Applicant repeatedly was granted conditional security clearances, was warned and has been fully aware that future issues with his finances would jeopardize his security clearance, and he continued to have financial issues. Even after his 2014 bankruptcy discharge where he had a complete financial reset, he again had difficulty paying his bills and had two cars repossessed.

Applicant has a significant payment for a repossessed vehicle that he no longer has possession of and only recently made arrangements to pay. He has a twenty-year history of failing to timely meet his financial obligations. There is insufficient evidence to conclude future financial issues are unlikely to recur based on his history. His conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Although some of his financial problems may have been beyond his control, it is only recently that he has acted responsibly in resolving them. AG ¶ 20(b) has some application. He has participated in financial counseling. He has resolved most of his delinquent debts, except the debt for the repossessed vehicle, for which he only recently made arrangements to satisfy. The question remains that based on his long history of financial problems whether he will be financially responsible in the future. AG ¶¶ 20(c) and 20(d) have some application. Despite some mitigation, Applicant needs more time to establish a solid financial track record of paying his bills on time and not accumulating new delinquent debts. It is too soon to conclude he has fully mitigated the security concerns raised by his finances.

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination,

security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(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.

Applicant was arrested and charged with domestic battery involving touching or striking his spouse. The evidence supports that Applicant deliberately failed to disclose his February 2013 NJP on his June 2015 SCA. The evidence supports that when Applicant was interviewed by a government investigator in September 2015, he falsified material facts provided to the investigator, specifically that he failed to disclose that he had unauthorized contact in a hotel room with a female foreign national whom he believed was potentially the mother of his child. I find the above disqualifying conditions apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken positive steps to alleviate the stressors,

circumstances, or factors that contributed to untrustworthy, unreliable, or inappropriate behavior, and such behavior is unlikely to recur.

Applicant successfully completed the PTD program through the Veteran's Court regarding his domestic violence. During that period, he was grieving the death of his son. Although, the offense is not minor, his conduct was infrequent and happened under unique circumstances that are unlikely to recur. AG ¶¶ 17(c) and 17(e) apply to SOR ¶ 2.a

Applicant deliberately failed to disclose his NJP on his 2015 SCA and when questioned by a government investigator in 2015, he failed to provide accurate and honest information. (SOR ¶¶ 2.b-2.c) I found Applicant's testimony often lacked candor and credibility. The security clearance process relies on those seeking a clearance to be honest and forthcoming. Applicant failed to do so, which casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply to those allegations.

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(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 F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those Guidelines, but some warrant additional comment.

I considered Applicant's military service and character evidence. Despite some mitigation, I find it is insufficient to overcome the security concerns raised. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the

security concerns arising under Guideline F, financial considerations and Guideline E, personal conduct.

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.c:	Against Applicant
Subparagraphs 1.d-1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b-2.c:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge