



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



In the matter of:)
)
) ISCR Case No. 21-02696
)
)
Applicant for Security Clearance)

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: Joseph L. Goff, Esq.

11/03/2023

Decision

MURPHY, Braden M., Administrative Judge:

The Government alleged financial considerations security concerns over Applicant’s delinquent debts, personal conduct security concerns over his failure to disclose those debts on his security clearance application, and foreign influence security concerns due to family connections to Colombia. Applicant’s family connections to Colombia are sufficiently explained that any foreign influence security concern is resolved in his favor. Applicant failed to disclose his past-due student loans, and other debts, on his security clearance application, but did so, in part, believing that the loans were in deferred status due to the COVID-19 pandemic. Security concerns alleged under Guideline E (personal conduct) are not established. Applicant had employment instability which impacted his ability to address his debts for a time, but his debts are large and unresolved. He has yet to establish a track record of steady payments and good-faith, responsible action towards his federal student loans. Security concerns under Guideline F (financial considerations) are not mitigated. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 25, 2021. On or about February 11, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DSCA CAF) issued him a Statement of Reasons (SOR) detailing security concerns under 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

In February 2022, Applicant answered the original SOR and requested a hearing. (Answer # 1) The correct date of the SOR and the date of the initial Answer are somewhat unclear from the record. His response was considered complete when he answered all of the allegations in an e-mail to the CAF on March 2, 2022. (Tr. 11-12) The case was assigned to me on April 18, 2023. The case was initially scheduled for June 13, 2023, by mutual arrangement.

Amendment to the Statement of Reasons

On June 7, 2023, Department Counsel amended the SOR to add a new allegation under Guideline B (foreign influence) as follows:

3.a: Your wife is a citizen and resident of Colombia.

Applicant did not object to the amendment, which was based on new evidence, (Tr. 22-23) but he requested and without objection received a continuance of the hearing so he could respond. (See Amended SOR and related e-mails, Hearing Exhibit (HE) III). On June 21, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice re-scheduling the hearing for July 17, 2023, by mutual agreement. Applicant answered the new allegation on July 7, 2023. (Answer # 2)

Applicant's hearing convened on July 17, 2023, and continued, by mutual agreement, on July 25, 2023. Department Counsel offered materials for Administrative Notice (AN), marked as AN I, and Government Exhibits (GE) 1-6, which were marked and admitted into evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A-S, which were marked and admitted without objection. At the end of the July 25, 2023 hearing, Applicant requested additional time to submit further documentation. On August 9, 2023, he advised that he had no further exhibits to submit, so I closed the record. DOHA received the transcript for the July 17, 2023 hearing (Tr.) on July 26, 2023, and received the transcript for the July 25, 2023 hearing (2Tr.) on August 3, 2023.

Administrative Notice

In connection with SOR ¶ 3.a, Department Counsel requested that I take administrative notice of certain facts about Colombia. The supporting documentation is marked as AN I. Applicant also included a U.S. State Department document for this purpose (AE Q) The relevant facts are addressed in the Findings of Fact, below.

Findings of Fact

Applicant denied the allegations at SOR ¶¶ 1.a-1.e and 2.a-2.b. He admitted SOR ¶ 3.a, with a narrative explanation. His admission is incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old. His first two marriages ended in divorce. He has two grown children. He remarried in July 2022 to a citizen and resident of Colombia. (SOR ¶ 3.a) After graduating from college in 1991, he was commissioned as a U.S. Marine officer and served until 2001, as an aviator. with the rank of captain (O-3). He held a clearance in the Marine Corps. He earned a master's degree in global finance in May 2009. (GE 1; Tr. 36-38; AE A; AE B, AE C)

Subsequent employments include as a professional race car driver (2001-2003), an employee of his family's franchising business (2003-2006), jobs in the pharmaceutical and health-care industries (2006-2013), and investment banking and finance (2013-2015). He worked for capital investment firm A from 2015 to 2022. In 2016 and 2017, Applicant founded two companies involved in construction and real estate ventures (company E) and related financing (company S), a government contractor. (AE B)

From June 2021 to February 2022, Applicant worked part-time at a large hardware store chain. From December 2021 to February 2022, he worked as a state government employee for State 1. (AE B) Applicant has been employed full time since March 2022 as a commercial airline pilot for a major U.S. airline. He worked for a regional carrier until September 2022, when he was hired by a major U.S. airline. He seeks a security clearance for his position as the managing partner and founder of company S, a government contractor involved in a joint venture with company E. (GE 1, Tr. 28-29, 38-45, 72-73, 94; 2Tr. 17-18 AE B)

For his work with capital investment firm A, Applicant worked on commission and not on salary. He earned little income in his time there (2015-2022) beyond the \$180,000 he earned in annual income in 2017. He said he had several hundred million dollars in construction projects lined up in his construction investment business, but opportunities evaporated between March and November 2020 at the start of the COVID-19 pandemic. By March 2021, his businesses were "out of cash" as was Applicant himself, and he soon faced "financial ruin." He had no income from company S or the investment firms. He took a part-time job at a large hardware store to make

ends meet. He earned \$13.75 an hour for 25 hours a week. He then was hired by State 1 through a veterans' employment program for \$36,000 annually. He used those funds to make his flying licenses current, which was necessary for his subsequent employment as a pilot. (Tr. 45-49, 72, 94-99, 127-128)

Applicant's company S remains in a joint venture with the construction company that is sponsoring his clearance application. He is considered "key management personnel" for company S, and he needs a clearance in that role. (2Tr. 18-21)

Guideline F

SOR ¶¶ 1.a (\$50,481) and 1.b (\$38,269) are federal student loan accounts that Applicant used to finance his master's degree. The loans were opened in 2013, according to GE 5, but this may have been when they were sold to a new lender, since he completed his master's degree in 2009. He said his student loans were current in 2017 because he was earning a regular salary and making regular payments. In March 2017, he requested that his federal student loans be placed in forbearance status due to lack of funds. (AE R; 2Tr. 5)

Applicant acknowledged missing student loan payments beginning in 2019. He chose to prioritize basic expenses (food, utilities, gas) and business expenses. He could not afford to make student loan payments. He estimated that he missed 10 student loan payments before seeking a deferment. (Tr. 49-53, 103-112) His finances were also impacted by the pandemic. (2Tr. 43) Applicant was unable to provide a payment history for his student loans because his original student loan provider went out of business. (2Tr. 15-17)

Applicant said the last time he made a payment on them was in 2019. He paid about \$400 a month from 2009 until 2017 when he fell behind and sought to place his debts in forbearance. He would make payments when he received commission checks and then request forbearance when "money was starting to dry up." (2Tr. 32-34; AE R) He acknowledged that the forbearance he received in 2017 was for about four or five months, and eventually his loans went to collections. (2Tr. 42-43)

Beginning in March 2020, all federal student loans were placed in deferred or forbearance status by presidential executive orders due to the COVID-19 pandemic. (Tr. 50, 84-85) An April 2023 CBR lists both federal student loan accounts as being in "pays as agreed" status. No payments are listed but no amount is past due. (GE 5)

Applicant said he owes about \$88,000 in federal student loans. He said \$5,000 may remain from his undergraduate degree, but \$75,000 plus interest was for the master's degree. (2Tr. 32) He currently owes no amount due on an income-based repayment plan for a family of four. (Tr. 81; AE D, AE E) The payment schedule options he provided show monthly payments of \$533 over 20 years, \$1,033 over 9 years, and \$1,533 over 6 years. (AE F; 2Tr. 30-31) His current plan to address his debts shows no payments for 12 months (income-based repayment), until July 2024, then \$448

payments for months 13 to 129 (year 2 to 11). (AE E) He intends to make payments during the first year even though no payments would be owed. He has not begun to make payments, but he planned to do so at the end of July 2023. (Tr. 80-86; 2Tr. 27-28, 31; AE D, AE E; AE F)

Applicant now earns an annual salary of almost \$91,000 as a commercial airline pilot. His salary is determined by length of service, job title, and the type of plane he flies. He expected a significant increase as of August 2023, to \$108,000 annual, and then an additional increase as of November 2023, to \$166,000 annual. (Tr. 73-75, 78-80, 93-94; AE J, AE K) He has calculated future student loan payments based on the significant increased income he expects as pilot. He has a mandatory retirement age of 65 as a pilot so he wants to pay off his student loans in 10 years. (Tr. 80-81)

The three other SOR debts are past-due credit card accounts. SOR ¶ 1.c (\$1,354) is a debt that has been charged off by a bank. (GE 3 at 3; GE 4 at 5) Applicant contacted the creditor numerous times and was told they have no record of the account and referred him to a third-party collector. He does not recall or recognize this account but intends to pay it off. (Tr. 69-71, 112-115, 121-122; 2Tr. 22-23)

SOR ¶¶ 1.d (\$442 past due, total balance of \$1,523) and 1.e (\$204 past due, total balance of \$906) are delinquent credit card accounts to the same creditor bank. Applicant took the cards out in about 2014 for business travel expenses (rental cars and hotel stays). He otherwise used credit cards only for emergencies. The accounts became delinquent in about 2019 or mid-2020 because his monthly expenses outpaced his business income (what he called his “burn rate”). He said he contacted the creditor about his payment troubles and he was allowed to make minimum payments. He also said that in 2020, the creditor offered deferred payments until December 2021, apparently due to the pandemic. However, he was not able to provide documentation of this. (Tr. 53-58; 66-69, 115-121; 2Tr. 14-15, 24; AE S)

Applicant paid \$400 towards these debts (\$200 a month) in June and July 2023 and has about \$1,800 outstanding, to be paid off by November 2023. Payments were automatic until he changed banks. (Tr. 61-62; 2Tr. 25-27; AE G, AE H) These accounts are being resolved.

In 2021, Applicant’s partnership rented an apartment for his use in State 1. Rent was not paid on the unit for April, May, and June 2021, totaling about \$4,000 to \$6,000 in back rent. He said the rent was forgiven when he moved out at the end of June 2021. It has not been paid. The creditor has not sought payment of the debt, but he plans to repay it. He disclosed the debt during his background interview. (GE 2 at 2; Tr. 122-126; 2Tr 9-12, 40-41) In retrospect, Applicant recognizes that the rent was delinquent and should have been disclosed on his July 2021 SCA. (Tr. 133-134) This debt was not alleged in the SOR. He is current on his personal income tax filings but business tax filings for his companies for tax years 2021 and 2022 remain unfiled. (2Tr. 36-38)

Applicant sought out a financial advisor in November 2022 about resolving his debts through a repayment plan and rebuilding his credit. He was advised to have a six-month financial “safety net.” He acknowledged that he needs to “start diffusing those debts” to show good faith. He prepared a family budget and payment plan in May 2023. (Tr. 60-61, 63, 2Tr. 35; AE I, AE J) The budget accounts for \$345 a month in student loan payments (total amount owed -- \$92,505) and payments for the credit card debts at SOR ¶¶ 1.c, 1.d, and 1.e. He listed a net remainder of \$582 (based on his \$93,860 salary at the time). (AE J)

Guideline E

The delinquent debts on Applicant’s August 2021 credit bureau report (CBR) include his two federal student loans (SOR ¶¶ 1.a, 1.b) and the bank debt at SOR ¶ 1.c, each in collections. Of the other two bank debts in the SOR, one is listed as 120 days past due and one is current on that CBR. (SOR ¶¶ 1.d, 1.e) (GE 3) All of the SOR accounts were past due as of April 2022. (GE 4)

The Financial section of Applicant’s July 2021 SCA includes questions asking whether “You are currently delinquent on any federal debt” and questions seeking disclosure of delinquencies involving routine accounts, including charged-off debts and debts in collection in the previous seven years. Applicant did not disclose his past-due federal student loans or any other delinquencies in answer to these questions. (GE 1 at 41) In answering SOR ¶¶ 3.a and 3.b, he denied any intent to deliberately falsify these answers and said he answered the questions to the best of his knowledge at the time and in good faith. (Answer # 1)

At his hearing, Applicant said he did not disclose the credit card accounts on his July 2021 SCA because he did not believe they were delinquent. He believed the creditor had agreed to place them in deferment. He has experience in financial services with accessing credit reports of others. There was nothing he did not disclose. (Tr. 58-59, 64-65; 2Tr. 24-25) He also believed his federal student loans were not delinquent since they had been placed in forbearance due to the COVID-19 pandemic. (Tr. 28-29) During his background interview, Applicant gave similar explanations for his lack of disclosure of these debts on his SCA when he was confronted about them by the interviewing agent. (GE 2 at 5-7) He said he was advised by his facility security officer (FSO) to answer all questions on his SCA accurately and completely because dishonesty is disqualifying. (Tr. 35-36)

Guideline B

Applicant’s wife is a citizen and resident of Colombia. (SOR ¶ 3.a) She provided a sworn statement. (AE L) They were introduced by a fellow airline pilot. They first spoke on the phone in August 2021 and met in person in early October 2021 in Colombia. They married in July 2022. He reported his marriage to his contractor company’s FSO soon afterward. (Answer # 2; AE L; Tr. 15, 31-35, 136-138)

Applicant's wife has two teenage sons from a prior relationship. They live with Applicant in Colombia when he is there subject to his flight schedule. He covers most household expenses for their home in Colombia. She wants to immigrate ("immigrate to" and "emigrate from") to the U.S. with her sons. He submitted a spouse immigrant visa for his wife in October 2022. (Answer # 2; AE L, AE M, AE N) She works in marketing in Colombia. She has never worked for the Colombian government. She speaks to her parents daily. One of her sisters is married to a customs agent employed by the Colombian government. They live many hours away by car. She interacts with her sister by phone once a month and they visit over the holidays. (Answer # 2; AE L; Tr. 82, 88, 89-90, 99-100, 135; 2Tr 8-9))

Applicant travels to Colombia regularly to stay with his wife. He intends to continue to do so, but only until she can move to the U.S. His schedule is mapped out in advance, based on his flight schedule. (Answer # 2; AE L, AE O; Tr. 87-89, 138-142; 2Tr. 38-39) He was in Colombia when he appeared for both of his DOHA hearings. (Tr. 143-144)

Applicant has no financial interests in Colombia beyond the apartment where he lives with his wife. (Tr. 142-143) Applicant's wife said she understands the importance of his clearance and will support him to ensure full transparency and compliance with laws and regulations. (AE L)

Applicant concluded his testimony by highlighting his long service to the country and his desire to continue to serve the country and the government as a contractor. He understands the immense responsibility of holding a clearance. He had no intention to deceive or mislead about his finances. He has a secure income as a pilot and is rebuilding his savings. (2Tr. 45-47)

Mr. W, the CEO of the construction company in Applicant's joint venture provided a character letter. Mr. W has known Applicant since 2017 and attests to Applicant's honesty and forthrightness, especially as to his finances and family life. Applicant is reliable and sincere. Mr. W has faith in Applicant's abilities and commitment to ethical conduct. He can be trusted in personal and professional matters and in matters of national security. (Tr. 90-91; AE P)

Colombia

With its Administrative Notice filing (AN I), the Government included information from the U.S. Department of State as of June 2023 about Colombia and its relations with the United States. Applicant provided AE Q, information from the State Department about U.S. Relations with Colombia as of July 2021 (current as of July 2023).

I take administrative notice of these facts, consistent with my obligation to make assessments based on timely information in cases involving foreign influence. ISCR Case No. 05-11292 at 4 (App. Bd. Apr. 12, 2007) ("Decisions in Guideline B cases

should be made to the greatest extent possible in the context of current political conditions in the country at issue.”) The information is detailed as follows:

With the support of the United States, Colombia has transformed itself over the past 20 years from a fragile state to a vibrant democracy with a growing, market-oriented economy.

Colombia is a constitutional, multiparty republic. The country held presidential and legislative elections in 2022 that observers considered free, fair, and peaceful.

In 2016, the Government of Colombia signed a peace accord with the Revolutionary Armed Forces of Colombia (FARC), ending decades of conflict.

Armed groups, as well as narcotics traffickers, were reported as significant perpetrators of human rights abuses and violent crimes, including acts of extrajudicial and unlawful killings, extortion, and other abuses or crimes, such as kidnapping, torture, human trafficking, bombings, restrictions on freedom of movement, sexual violence, unlawful recruitment and use of child soldiers, and threats of violence against journalists, women, human rights defenders, and religious leaders.

The United States is committed to cooperating with Colombia to undermine the transnational criminal organizations whose activities, especially narcotrafficking, are devastating to the citizens of Colombia and of the United States.

In addition, the State Department advises that U.S. citizens considering travel to Colombia should exercise increased caution, given the risk of civil unrest, violent crime, organized crime, terrorism, and kidnapping.

Policies

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

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, 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 avoided drawing inferences grounded on mere speculation or conjecture.

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

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline B, Foreign Influence

AG ¶ 6 sets forth the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or classified information or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or

resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion.

Guideline B is not limited to countries hostile to the United States. "The United States has a compelling interest in protecting and safeguarding [classified] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004).

AG ¶¶ 7(a) and 7(e) require evidence of a "heightened risk." The "heightened risk" required to raise these disqualifying conditions is a relatively low standard. It denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

Applicant has family connections to Colombia through his wife. This raises a "potential conflict of interest between the individual's obligation to protect classified or classified information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology" under AG ¶ 7(b). A heightened risk is also established, given the administratively noticed facts about Colombia and the State Department's travel advisory. AG ¶¶ 7(a) and 7(e) therefore apply.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and

longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant resides with his wife (and her two teenage sons) in Colombia when he is on leave or off duty from his full-time job as a commercial airline pilot in the U.S. They have applied for a spousal visa so she can immigrate to the United States, presumably with her sons. She is close to her parents, also in Colombia, and speaks to them regularly, even daily. The level and frequency of Applicant's contact with his wife when he is in the United States and she is in Colombia is not clear from the record, but it is probably regular and frequent. AG ¶ 8(c) does not apply.

I conclude, however, that AG ¶¶ 8(a) and 8(b) do apply, and mitigate the Guideline B security concerns arising from Applicant's family connections to Colombia. Applicant's only tie to Colombia is through his wife. It is ongoing, though they intend to live there only until she can immigrate to the United States. He also has strong ties in the U.S., not only as a former Marine officer and aviator but through his ongoing professional and family ties of his own.

Colombia is also undergoing transformation. This creates an atmosphere that is not without risk. There is some foreign influence risk due their presence in Colombia. However, there is no indication in the record that either Applicant or his wife's family have been personally adversely affected by the ongoing security risks in Colombia as noted by the State Department. While some elements of heightened risk exist, Applicant's personal circumstances significantly lessen the chances that he might be subject to exploitation, coercion, or duress through his relationship with his Colombian wife. AG ¶ 8(a) therefore applies.

While Applicant and his wife have understandably strong connections to her family in Colombia, this is also outweighed by Applicant's service in the Marine Corps and his other ties to the U.S. With that background, Applicant can be expected to resolve any conflict of interest in favor of the best interests of the United States. Applicant met his burden of persuasion in establishing that AG ¶ 8(b) applies to mitigate the foreign influence security concerns arising in this case.

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, security, and ability to protect classified or classified 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 handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns under the financial considerations guideline. The following are potentially applicable:

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

Applicant used federal student loans to finance his master's degree, which he earned in May 2009. His federal student loans now total about \$88,000. He was making regular student loan payments when he was earning a steady income several years ago, but beginning in 2017, he fell behind due to loss of income when his businesses struggled. He testified that he received some deferments and resumed making payments when he was able to do so. An offer of deferment in 2017 is documented (AE R) but little else in the record is clear about what he paid and when. Applicant testified that he missed about 10 student loan payments in 2019, again due to loss of income and prioritizing other expenses. His loans then became delinquent. (GE 3, GE 4) This is sufficient to apply AG ¶¶ 19(a) and 19(c). Applicant's other SOR debts (SOR ¶¶ 1.c, 1.d, and 1.e) are credit card debts tied to his decline in business income after 2017. AG ¶¶ 19(a) and 19(c) applies to them as well.

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, security, 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 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; and

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

Applicant's credit card debts are quite limited, totaling only about \$3,800. He is paying two of them (SOR ¶¶ 1.d and 1.e) and intends to pay the other (SOR ¶ 1.c). All of those debts are related to his business. They are being resolved and are not significant debts compared to his \$90,000 income as a pilot.

Applicant's federal student loans, however, are significant and ongoing. While they have been in forbearance status due to the pandemic since March 2020, I must also look to the overall payment history. Applicant incurred his student loans to pay for business school, which he completed in 2009. He did not establish any recent responsible efforts to address them. They may have been in deferred status in 2017, but he fell behind again in 2019, before the pandemic, again due to loss of income from his businesses. His debts are ongoing, and while he has ample income (both currently and expected income in the future, Applicant has yet to establish a track record of steady payments towards his federal student loans that is sufficient to show good faith or reasonable action under the circumstances.

Applicant did not provide sufficient evidence to establish that his lack of action towards his ongoing federal student loans is unlikely to recur and does not cast doubt on his current reliability, security, or good judgment. AG ¶ 20(a) does not apply

Applicant fell behind on his student loans and other debts when his business income fell off and was outpaced by his expenses. This was a circumstance beyond his control that impacted his finances so AG ¶ 20(b) partially applies. To his credit, he has put himself in position to have a lucrative career as a commercial airline pilot. However, as noted, he has not acted responsibly by addressing his student loans in a reasonable manner, despite increased income and likelihood of future increased earnings. Essentially, Applicant is promising to show good faith towards his student loans on the basis of increased financial stability and future increased income from his job as a pilot. Promises to pay off delinquent debts in the future, however sincere, are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 09-05252 at 3 (App. Bd. Dec. 9, 2010); ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999). What is missing here is a track

record of payments towards his student loans, which are significant and long term. Applicant has not demonstrated that AG ¶ 20(b) should fully apply. For similar reasons, AG ¶¶ 20(c) and 20(d) also do not apply. Applicant did not provide sufficient evidence to mitigate the financial security concern.

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. The following disqualifying conditions are potentially applicable:

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

Under Guideline E, the Government alleged that Applicant deliberately failed to disclose his federal student loans and the other credit card debts as delinquent debts on his July 2021 SCA. Applicant denied the allegations.

On the one hand, Applicant's federal student loans are established as delinquent debts as they were in collection status on his August 2021 CBR. However, by that time, the federal student loans were also in forbearance status due to the pandemic by executive order. Thus, they were not delinquent, and need not have been reported as such on Applicant's SCA. Further, Applicant credibly believed that they did not need to be reported as such on the basis of his understanding that his federal student loans were not delinquent at the time.

Applicant's student loans *were* delinquent at certain points before the pandemic began, in March 2020, and should probably have been reported as such on his SCA. But he believed that the debts were in deferment on the basis of his prior interactions with his student loan provider. He also believed that his other, credit card debts (SOR ¶¶ 1.c and 1.d) were also in deferment (which is not established) and he did not recognize the debt at SOR ¶ 1.b. Ultimately, I conclude that AG ¶ 16(a) is not established for SOR ¶¶ 2.a or 2.b.

Whole-Person Concept

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

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

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a determination of public trust 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 B, E, and F in my whole-person analysis.

Under the whole-person concept, I credit Applicant's military service as a Marine officer and an aviator. After carefully weighing the evidence, both favorable and unfavorable, and considering the whole-person factors set forth in AG ¶ 2(d), I find that personal conduct security concerns about his SCA are not established and that foreign influence security concerns are mitigated. However, Applicant did not provide enough evidence to mitigate the financial considerations security concerns arising from his long-term and ongoing federal student loans. Overall, the record evidence leaves me with questions and doubts as to his eligibility and suitability for access to classified information.

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.b: | Against Applicant |
| Subparagraphs 1.c-1.e: | For Applicant |

| | |
|---------------------------|---------------|
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraphs 2.a-2.b: | For Applicant |
| Paragraph 3, Guideline B: | FOR APPLICANT |
| Subparagraph 3.a: | For Applicant |

Conclusion

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

Braden M. Murphy
Administrative Judge