



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-01966
)
Applicant for Security Clearance)

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: Carl Marrone, Esq.

04/18/2023

Decision

MASON, Paul J., Administrative Judge

Applicant’s evidence is insufficient to mitigate the security concerns raised under the guidelines for personal conduct and financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On December 12, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On May 4 and May 16, 2017, he provided personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings required to continue a security clearance, and issued Applicant a Statement of Reasons (SOR), dated December 7, 2021, detailing security concerns raised by personal conduct (Guideline E) and financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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 he adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided an undated answer to the SOR. He admitted all the personal conduct allegations under SOR ¶¶ 1.a through 1.e without explanations. The lack of an answer to SOR ¶ 2.a is interpreted as an admission based on Applicant's affirmative answers under SOR ¶ 1. He admitted SOR ¶¶ 2.b and 2.g, and denied SOR ¶¶ 2.c, 2.d, 2.e, and 2.f, without explanations.

The Defense Office of Hearings and Appeals (DOHA) issued a notice for a hearing on January 13, 2023. The hearing was held by Microsoft Teams video teleconference as scheduled. The Government's seven exhibits (GE) 1-5, 7, and 8 were admitted into evidence without objection. GE 6 and 8 were excluded from evidence because the probative value of the evidence is outweighed by unfair prejudice and confusion of the issues. See Tr. 11-16; Federal Rules of Evidence (FRE), Rule 403. DOHA received the transcript (Tr.) of the hearing on January 26, 2023. Citations to the government exhibits will identify the handwritten page number written in the lower righthand corner or the bottom-center of the page.

Findings of Fact

Applicant, 35 years old, married his current wife in June 2021. They have a five-month-old baby; he has two sons, ages 15 and 13, from his first wife who he divorced in 2014. He earned college credits between August 2006 and December 2006, and January 2010 and February 2012, but received no degree. In his December 2016 e-QIP, he denied financial debts altogether. (GE 1 at 11-34; GE 7 at 5; Tr. 19-20)

Applicant is currently employed in two full-time positions, one as a pricing specialist, another as a consultant. The defense contractor who employs Applicant as a consultant, is sponsoring his security clearance. In this job, Applicant occupies a public trust position. As a pricing specialist, Applicant is a corporate employee and not a contractor. He earns a total of over \$200,000 a year from both jobs. (Tr. 65-70)

Personal Conduct

SOR ¶ 1.a – Applicant embezzled money between the fall of 2009 or 2010 and September 2013 at a non-profit school providing special services to students with mental disabilities, emotional disorders, or autism. He engaged in this conduct when he was between 23 and 26 years old. While working at a restaurant in 2006, he received an offer of employment at the special needs school. (GE 7 at 8) He worked in several positions before becoming the financial manager of the school in 2009 or 2010. (GE 7 at 8; Tr. 23-27, 71) The school treated him like family. (Tr. 26) As financial manager between 2010 and his termination in October 2013, Applicant embezzled approximately \$100,000 by writing checks to himself for three or four years. He did not have to do much to conceal his activity because oversight was lacking. The largest check that he wrote during the period was \$1,500. He testified that his handwritten statements

concerning how he carried out the embezzlement and how the activity ended, were true. (GE 5) Applicant decided to admit to a school official after suspicious charges appeared on a school credit card in August 2013. (Answer to SOR; GE 5 at 1-12; GE 7 at 9; Tr. 27, 31-32, 72-73)

As financial manager, Applicant was charged with reconciliation of all school accounts. He had access to the school credit cards and school checks. In the fall of 2009, his first wife quit her job and moved out of their apartment at about the same time his first child was born. Unable to pay the lease himself, he moved out of the apartment before the end of the lease, resulting in his wages being garnished by the landlord for the balance of the lease. With access to the school checks and credit cards, Applicant began misappropriating the school's money for personal use. He initially purchased necessary items for his children like clothes, or his home like rent and utilities. Then he wrote checks for his family and friends who were experiencing financial problems. Initially estimating he embezzled no more than \$80,000, he eventually lost track of the amount of money he pilfered from school credit cards or checks. (GE 5 at 2, 10; GE 7 at 10-11; Tr. 27-30, 72)

In addition to writing checks for his family and his house, Applicant wrote a check to cover expenses for his own college classes. To reduce his debt after his wages were garnished in the fall 2009, he wrote additional checks, promising himself that he would stop when his financial problems abated and when the school switched from one bank to another. He anticipated repaying the school at an unidentified future date. (GE 5 at 2, 9-10; GE 7 at 11)

SOR ¶ 1.c – In response to Section 13A of his December 2016 e-QIP, Applicant was asked whether in the last seven years he had been fired, or quit his job after being told he would be fired, or left by mutual agreement following charges of misconduct, or left by mutual agreement following notice of unsatisfactory performance. He answered “no” stating that he “left to further pursue education.” He deliberately did not disclose his SOR ¶ 1.a conduct. Applicant's claim that he was in school at the time, is not supported by his e-QIP or witness C, a co-worker at the school. See GE 1 at 11, 17-18; Tr. 112-125. Applicant falsified the December 2016 e-QIP because he did not want to lose his employment and the potential earnings that awaited him if his security clearance application was approved. (Answer to SOR; Tr. 35, 38)

SOR ¶ 1.d – in response to Section 26 of his December 2016 e-QIP, Applicant was asked if he had been counseled, warned, or disciplined for violating the terms of a travel or credit card in the last seven years. By answering “no” (GE 1 at 33), he deliberately failed to reveal the SOR ¶ 1.a conduct. He lied because he feared that he would not receive a security clearance. (Answer to SOR; Tr. 85)

SOR ¶ 1.b – During a May 2017 personal subject interview (PSI) with an OPM investigator, Applicant indicated that he never told his first wife of the SOR ¶ 1.a conduct because she would use it against him. He had filed for divorce in July 2013,

and was afraid she would try to get full custody of their two sons. (Answer to SOR; GE 7 at 11; Tr. 35, 38)

SOR ¶ 1.e - During the May 2017 interview with the OPM investigator, Applicant failed to disclose his SOR ¶ 1.a conduct. Instead, he claimed that he had no history of employment issues in the previous seven years. Applicant did not reveal the embezzlement until the OPM investigator confronted him about the misconduct. (Answer to SOR; GE 7 at 8, 9-12; Tr. 87-88)

Applicant testified that he had completed many e-QIPs since his December 2016 e-QIP and May 2017 PSIs, and truthfully disclosed all the circumstances of his October 2013 employment termination. He believes his positive accomplishments have resulted from adverse past events and he feels no need to conceal those events anymore. Applicant was unable to produce the e-QIPs because he could not access the e-QIP web site since he did not have an active investigation. No additional information was provided. (GE 5 at 1; Tr. 40, 88-89)

Financial Considerations

SOR ¶ 2.a – The SOR also cross-alleges SOR ¶ 1.a in SOR ¶ 2.a. Applicant did not answer this allegation. However, I find against him based on his admission to the embezzlement under SOR ¶ 1.a. Applicant testified that he would like to make a donation to the special needs school. In 2020, he spoke to one of the school directors during a COVID-related funeral of a mutual friend and apologized for his misconduct. The director told Applicant that more severe discipline was not imposed against him because the director wanted him to turn his life around. Applicant has not returned any of the funds to the special needs school. During the first week of January 2023, Applicant provided an update to the director on how circumstances have positively changed in his life. (Tr. 54-57, 76)

SOR ¶ 2.b – In Applicant's May 2017 PSI (GE 7), an OPM investigator interviewed him about child support arrears and other delinquent accounts set forth in SOR ¶ 2. He indicated in the first two pages of the exhibit that he agreed with information he provided to the OPM investigator and adopted the investigator's summary as an accurate reflection of the interviews. On January 22, 2018, Applicant's affirmation of the May 2017 PSI was notarized. (GE 7 at 1-3)

Applicant admitted that his child support for his two sons was in arrears. He indicated that his interim clearance had been withdrawn in 2018 because he did not respond to an SOR that he never received. Unemployment for six months during the year triggered the child support arrears. Applicant's documentation reflects that his arrears on December 20, 2022 were reduced to \$9,549. (AE C) His current child support payments are automatically taken from his paycheck. The present support order requires \$976 a month in current support payments and \$240 a month for arrears. Applicant is regularly involved in his son's weekly activities. He willingly provides monetary assistance to his two sons above the child support requirements. He has

hired a trainer to ensure his sons receive adequate exercise. (Tr. 42-45, 60-64, 126-132) This debt is resolved in Applicant's favor.

SOR ¶ 2(c) – The SOR ¶ 2.c account appears in the Government's credit reports (GE 2, 4, and 9). In Applicant's May 2017 PSI (GE 7), he discussed a car account (no account number listed) with the OPM investigator. He stated that he leased a car that was repossessed in 2014 by a car company after he lost his job at the special needs school in September 2013. Applicant indicated that the \$6,000 he estimated that he owed was somehow resolved or eliminated when, in his view, he voluntarily turned the car back into the dealer in March 2014. The last five lines of the paragraph are ambiguously worded. Later in the PSI, the investigator interviewed Applicant about the earlier repossession. Applicant agreed with the earlier discussion about the repossession. However, the investigator quoted an account number that did not appear in the earlier discussion of the repossession. He also identified a different car than the one discussed earlier in the PSI. (GE 7 at 13, 15)

In his testimony, Applicant explained that he had no idea what the SOR ¶ 2.c account represented. After claiming that he disputed the account with the help of a dispute letter provided by an online dispute application, the account was removed by two of the three credit agencies. (Tr. 45-46) However, the account still appears in the Government's and Applicant's December 2022 credit reports. (GE 9 at 5; AE D at 5) Applicant claimed that he returned the car and paid the amount owed on the lease because he did exceed the amount of mileage allowed. His testimony that he returned the car and paid the mileage fee implies that he acknowledges the car account. What is missing is documentary support for his claim of paying the balance due on the leased car. Notwithstanding the discrepancies in the May 2017 PSI, I find that Applicant leased a car that he returned to the dealer in March 2014. His claim of paying off the balance of debt is not corroborated. The debt is unresolved.

SOR ¶¶ 2.d, 2.e, and 2.f – The Government's June 2019 credit bureau report shows that the last payment activity on three federal credit union accounts is between February and May 2014. The account numbers for the three accounts are crossed out. (GE 4 at 2) Under each entry in the report is the notation that Applicant disputed the three credit union accounts. (GE 4 at 2)

The OPM investigator interviewed Applicant in May 2017 about delinquent credit union accounts, including those listed at SOR ¶¶ 2.d, 2.e, and 2.f. Applicant informed the investigator that that he owed about \$9,000 for a credit union credit card. He began paying on the charged off debt in April 2017. No account number is posted in Applicant's account of the credit union credit card. (GE 7 at 13) Two pages later, the PSI posts account numbers and debt amounts. (GE 7 at 15) Applicant agreed with the three accounts. He stated some credit union accounts were duplicates. He mentioned that he was in a payment plan to pay off the accounts in five years. On the next page, Applicant stated that the credit union debts, the child support, and the repossession troubles arose as a result of the embezzlement. (GE 7 at 15, 16)

In his testimony, Applicant indicated that he did not know about these accounts until the May 2017 PSI. He did not recall the payment plan or the debts belonging to him. He disputed them and claimed that he provided evidence to the credit agency that SOR ¶¶ 2.d, 2.e, and 2.f did not belong to him, and they were removed by the three agencies by 2021. (GE 2 at 5; GE 4 at 2; GE 7 at 13, 15; GE 9 at 5; Tr. 49, 92-97) Because of the age of the three debts, it is likely that the debts were removed by the expiration of the statute of limitations, not because the accounts did not belong to him. I do not find his testimony credible. SOR ¶¶ 2.d, 2.e, and 2.f have not been resolved.

SOR ¶ 2.g – Applicant admitted owing the Department of Education (DOEd) \$222 for a student loan that was opened while he was enrolled in school in 2010 to 2012. The loan is delinquent. He has not repaid the loan because the Federal Government placed repayment of student loans on hold due to the COVID pandemic. The hold is still in effect. Applicant will repay the loan when advised by the Government or his school. (Tr. 50-51) The account is resolved in Applicant's favor.

Applicant does not intend to lie to the Government in the future. He has a keen understanding of what trustworthiness signifies. He perceives himself as someone who is rehabilitated based on the necessary adjustments he has made in his life. (Tr. 58-60)

Character Evidence

Witness B, a contractor for the Government, is Applicant's first cousin. He received his security clearance in 2007. He complimented Applicant as a good husband and father, who demonstrates a solid job performance. Witness B views the three-year period of embezzlement as a mistake or error in judgment that Applicant will not repeat because he has matured. (Tr. 106-109)

Witness C is currently the regional program director at the school that terminated Applicant in October 2013. Even though Applicant committed the embezzlement, witness C still believes that Applicant is trustworthy. In the last ten years, Applicant has matured and is rebuilding his life. He resumed employment. He remarried. He is responsibly raising his children. (Tr. 112-125) Witness C generated a character statement (AE L) explaining that Applicant demonstrated remorse for committing the embezzlement. With the passage of time, Applicant remarried, and his wife had a baby. He purchased a home. Applicant has matured by learning from his past mistakes. (AE L)

Witness D, a personal trainer, has known Applicant since childhood. He considers Applicant an honest and helpful friend. Applicant's embezzlement and falsification does not negatively affect witness D's opinion of Applicant as a trustworthy friend who is headed in the right direction. Witness D opined that Applicant's embezzlement was caused by not knowing what to do at the time. He has grown since then and divorcing his first wife helped that growth. (Tr. 126-131)

Applicant's wife is employed as a journalist for a television station. She met Applicant in 2013 and admired his character. About a week after he was terminated from the special needs school, he told her about embezzling from the school. Her respect for him increased because he could have waited to tell her or not tell her at all. Since 2013, Applicant has focused his attention on accomplishing goals like getting married, purchasing a house and becoming certified in his profession. His wife believes she and Applicant are financially stable and current on all financial obligations. Applicant did not seek her advice on how to answer Section 26 of his December 2016 e-QIP. (Tr. 137-146)

In December 2022, Applicant was certified as a performance management professional. He received two additional certificates as an agilest and a scrum master. (AE H)

Reference J wrote a three-page character reference that she has known Applicant since 2006 when they both worked at the special needs school where the embezzlement occurred. Reference J admired Applicant's dedication in the different jobs he held at the school. In interacting with Applicant during all significant phases of his life, she has become a close friend. Applicant has always tried to learn from his mistakes and improve his life and the lives of those around him. (AE J) Reference J made no reference to Applicant's embezzlement and the effect, if any, the conduct had upon her opinion of him.

Reference K is a senior systems administrator at a software company. He and Applicant have been colleagues for 10 years. Applicant provided tuition for 15 students to become certified in information technology (IT). Applicant's contributions have enhanced the success of Reference K's employer. (AE K)

Reference M, a program manager for a federal agency, has known Applicant for seven years. They met socially and became coworkers. They worked together from August 2019 to December 2020. (Tr. 70) Reference M considers Applicant dependable and honest. Staff members regularly referred to Applicant for advice on complex technical issues and financial methodology. (AE M)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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

Analysis

Personal Conduct

AG ¶ 15 expresses the security concerns related to 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. 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. Conditions that could raise security concerns and may be disqualifying include:

(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 profession involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that he may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information ...

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

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; 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.

SOR ¶ 1.a - Between the fall of 2009 and the end of September 2013, Applicant was the manager of finance, responsible for reconciliation of all accounts at the special needs school. He was in charge of all school checks and school credit cards. He admitted that he began writing school checks to himself. Initially, he purchased necessary items for his children, or his house, or his education. Then, he purchased items that he wanted but did not necessarily need. After misusing a credit card for personal items in August 2013, he was terminated in October 2013 for embezzlement. Applicant's three to four-year period of embezzlement and misuse of a school credit card establishes AG ¶¶ 16(c), 16(d)(3), and 16(d)(4). The relevance of AG ¶ 16(e) is reduced by Applicant's divorce from his first wife in 2014.

SOR ¶ (1.c) - Applicant admitted that he deliberately falsified Section 13A of his December 2016 e-QIP when he did not disclose that in October 2013, he was terminated from employment at the special needs school. SOR ¶ 1.d – Applicant admitted that he intentionally falsified Section 26 of the same e-QIP when he denied

being counseled or disciplined for violating the terms of his employer's credit card. AG ¶ 16(a) applies.

SOR ¶ 1(b) – Applicant deliberately concealed his SOR ¶ 1.a conduct from his May 2017 PSI when he expressed concern that his former spouse would use the SOR ¶ 1.a conduct against him. SOR ¶ 1.e – During the same interview described above, Applicant deliberately concealed material facts by denying he had any employment issues in the previous seven years. AG ¶ 16(b) applies.

AG ¶ 17. Conditions that could mitigate security concerns include:

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

(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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate the vulnerability to exploitation, manipulation, or duress.

After considering the foregoing conditions that could mitigate Applicant's personal conduct, AG ¶ 17(a) does not apply because Applicant did not correct the concealment until confronted by the embezzlement. AG ¶ 17(c) does not apply because his deliberate falsifications of his security clearance application in 2016 and the 2017 PSI are serious offenses and demonstrate his lack of reliability and judgment.

Applicant receives some mitigation under AG ¶ 17(d) for the positive adjustments he has made in his life recently. After finally admitting the embezzlement in May 2017, Applicant remarried in 2021 and is raising a young baby born at the end of 2022. He has restored his child support to a current status. However, he has not provided any restitution to the special needs school. In sum, the limited mitigation Applicant receives under AG ¶ 17(d) is insufficient to find in his favor under the personal conduct guideline.

Though Applicant's current child support obligation indicates that he still has to interact with his former wife, his divorce in 2014 reduced his vulnerability to exploitation. By finally disclosing the embezzlement to his current wife in 2013 and to the Government in May 2017, and restoring his child support to a current

status, Applicant has taken meaningful steps to eliminate his vulnerability to manipulation. AG ¶ 17(e) applies.

Guideline F, Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

A person's practice of paying his voluntarily incurred debts is a private matter until evidence reveals that he is not paying his debts in a timely fashion. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) AG ¶¶ 19(a) and 19(c) apply because Applicant has provided no evidence to support his claims that he paid the SOR ¶ 2(c) debt, and that the SOR ¶¶ 2(d), 2(e), and 2(f) debts do not belong to him. AG ¶¶ 19(b) and 19(d) apply to SOR ¶ 2(a) because Applicant embezzled a large amount of money over a lengthy period of time and has not provided restitution even though he has had ample opportunities since 2013. Applicant's documentation shows that he has restored currency to his child support. (SOR ¶ 2(b)) He has established that repayment

of his student loan has been paused by the Government for COVID-related reasons. Conversely, Applicant has provided no documentary evidence to support his denials of SOR ¶¶ 2(c), 2(d), 2(e), and 2(f).

AG ¶ 20. Conditions that could mitigate security concerns include:

(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; and

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

AG ¶ 20 (a) is not available for mitigation because only two of the eight debts have been resolved. Though the embezzlement and misuse of the school's credit card ended more than nine years ago, the conduct was neither isolated nor resolved. Applicant's concealment of the conduct in 2016 and 2017 continues to cast doubt on his current reliability and judgment.

AG ¶ 20(b) does not apply. Applicant's loss of employment in September 2013 occurred because of his decision in the fall of 2009 to take money from the school for a three or four-year-period. Embezzling money from an employer is not a legitimate method of solving financial problems. By not resolving the ¶¶ 2(a), 2(c), 2(d), 2(e), and 2(f) debts, Applicant has not acted responsibly under the circumstances.

AG ¶ 20(c) does not apply as there is no evidence that Applicant has had financial counseling, and there is no documentation that indicates the delinquent debts are being resolved or under control.

Applicant has not furnished sufficient evidence to show that he is making a good-faith effort to repay most of his creditors. Assuming that he is relying on a limitations statute making the SOR debts no longer enforceable, his reliance is misplaced. The DOHA Appeal Board has repeatedly held that in security clearance decisions, the Government is entitled to evaluate the surrounding facts and circumstances of applicant's conduct, regardless of whether the ¶¶ 2(a), 2(c), 2(d), 2(e),

and 2(f) debts are considered unenforceable due to the running of the applicable statute of limitations. See ISCR Case No. 11-07-09966 at 2-3 (App. Bd. June 25, 2008); See ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016). Relying on the statute of limitations does not constitute a good-faith effort to eliminate financial debts. See ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016). Accordingly, AG ¶ 20(d) does not apply.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 35 years old and has provided favorable evidence that he is a responsible husband and a good father. His character evidence indicates that he is well respected by similarly situated co-workers in his professional field. I have considered Applicant's certifications, his performance evaluations, and his decision to provide the tuition for a group of students so that they could receive IT training.

The positive character evidence does not overcome the security concerns raised by Applicant's theft of money from the non-profit school and his concealment of the theft in his December 2016 e-QIP and his PSI in May 2017. After evaluating the specific conditions under Guidelines E and F, and weighing the evidence in the context of the whole-person concept, Applicant has not mitigated the personal conduct of financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline E:

AGAINST APPLICANT

Subparagraphs 1.a, 1.c-1.e:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a, 2.c-2.f:	Against Applicant.
Subparagraphs 2.b, 2.g:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge