



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



In the matter of:)
)
) ISCR Case No. 11-00180
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: John V. Berry, Esquire

03/08/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, exhibits, and testimony, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations, but failed to mitigate the Government's security concerns under Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Statement of the Case

As the employee of a defense contractor, Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on April 15, 2010. In September 2010, he was interviewed about a civil court action by an authorized investigator from the U.S. Office of Personnel Management (OPM). On July 27, 2011, Applicant provided notarized responses to interrogatories posed by the Defense Office of Hearings and Appeals (DOHA). On September 29, 2011, DOHA issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal

Conduct, and Guideline F, Financial Considerations. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On October 18, 2011, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on November 29, 2011. I convened a hearing on January 6, 2012, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses, introduced two exhibits, and offered facts in two compilations of state code citations for administrative notice. The Government's exhibits were marked as Exhibit (Ex.) 1 and Ex. 2 and entered in the record without objection. Applicant did not object to notice of the facts in the documents offered for administrative notice, which were marked as Hearing Exhibit (HE) 1 and HE 2 and included in the record without objection. Applicant testified on his own behalf, called two witnesses, and offered 15 exhibits, which were marked as Ex. A through Ex. O and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on January 10, 2012.

Findings of Fact

The SOR contains 11 allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 1.a(1) through 1.a(7), 1.b(1) through 1.b(3), and 1.c) and one allegation of disqualifying conduct under AG F, Financial Considerations (SOR ¶ 2.a). In his Answer to the SOR, Applicant admitted the personal conduct allegations and denied the financial considerations allegation, with explanation. Applicant's admissions are included as findings of fact.

Applicant is 55 years old, married, and the father of two adult daughters. He is employed as a senior program manager by a government contractor. A high school graduate, he enlisted in the military in 1976. He rose to the highest levels of the enlisted ranks and was subsequently commissioned as an officer, a position in which he also excelled. He retired from the military in 2000, and he received an honorable discharge. He held security clearances during his military service. (Ex. 1; Ex. 2; Ex. A; Tr. 63-67, 86, 112.)

After his military retirement, Applicant went to work for a small technology company. As an employee of the technology company, Applicant signed a nondisclosure agreement. The technology company was purchased by Company A, a defense contractor. Applicant worked as a manager and supervisor at Company A from 2000 to 2009. As an employee of Company A, Applicant did not sign a nondisclosure agreement. (Ex. 1; Tr. 70.)

In his work at Company A, Applicant directed the work of between 30 and 35 employees who were program managers. There came a time when Applicant became aware of morale problems at Company A. Employees were not able to receive bonuses, and the company reduced its contributions to employee retirement accounts. A larger business was considering the purchase of Company A. A number of employees left Company A and sought employment elsewhere.¹ (Tr. 67, 105.)

Applicant learned that a former colleague and friend in Company A, who had left Company A in January 2008, was establishing a government services division at Company B, another government contractor. In the spring of 2009, Applicant and another colleague, a vice president of Company A, left Company A and took positions with Company B. A fourth individual, also a personal friend of Applicant's and a former colleague at Company A, was in a leadership position at Company B.² (Ex. 1; Tr. 81-82, 135, 145-149.)

When he left Company A, Applicant turned in all equipment that had been provided to him by the company. He took with him his personal 20 gigabyte hard drive, which he had used while employed for nine years at Company A. Applicant stated that he used the personal hard drive because the equipment provided by his employer lacked sufficient memory to store the information he wished to archive. Applicant explained that he used the hard drive to store pictures, family data, recipes, and archived e-mails. He stated that there were also some power point presentations on his hard drive. He put the hard drive in the trunk of his automobile when he left Company A. Later, on the advice of counsel, he turned the hard drive over to Company A for forensic examination. Applicant stated that the forensic examination revealed that there was no classified information on his personal hard drive. (Ex. 2; Tr. 70.)

Applicant claimed that he left Company A on good terms. He was responsible for directing two large programs serving military clients. He ensured that his duties were appropriately transferred to other managers, and he sent a farewell e-mail to those employees who reported to him. (Tr. 70-71.)

In June 2009, within two weeks of assuming his new position at Company B, Applicant and the three other former senior employees of Company A were named as defendants, along with Company B, in a civil complaint brought against them by Company A. Company B retained counsel, which represented the company, Applicant, and the other three defendants. (Ex. 2; Tr. 68, 87.)

The civil complaint alleged that Applicant had breached his fiduciary duty to Company A and breached his employment contract (non-disclosure agreement) with Company A. The civil complaint also alleged that Applicant violated a state computer

¹ Applicant estimated that of the 250 employees in the work group at Company A, 50 to 75 left for other positions during this time. (Tr. 103.)

² The fourth individual left Company A around 2004. He later served as an Assistant Secretary in the Executive Branch of the U.S. Government. (Ex. B; Tr. 81-82, 101-102.)

crimes act and that he, along with the other named defendants, violated a state business conspiracy act. Additionally, the civil complaint alleged that Applicant and his co-defendants were liable on a claim for civil conspiracy and that Applicant was liable on claims of misappropriation of trade secrets and conversion. (Ex. 2.)

I take administrative notice of the applicable state uniform trade secrets act, which defines “misappropriation” as follows:

1. Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. Disclosure or use of a trade secret of another without express or implied consent by a person who
 - a. Used improper means to acquire knowledge of the trade secret; or
 - b. At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was
 - (1) Derived from or through a person who had used improper means to acquire it;
 - (2) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use;
 - (3) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
 - (4) Acquired by accident or mistake.

(HE 1)

The state statute defines “improper means” to include “theft, bribery, misrepresentation, use of a computer or computer network without authority, breach of a duty or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.” (HE 1)

The state statute further states: “If willful and malicious misappropriation exists, the court may award punitive damages in an amount not exceeding twice any award made under subsection A of this section [specifying terms for money recovery of damages] or \$350,000 whichever amount is less.” Additionally, the statute provides: “If the court determines that (i) a claim of misappropriation is made in bad faith, or (ii) willful and malicious misappropriation exists, the court may award reasonable attorneys’ fees to the prevailing party.” (HE 1)

I also take administrative notice of the applicable state business conspiracy act, which reads, in pertinent part:

- A. Any two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever or (ii) willfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act, shall be jointly and severally guilty of a Class 1 misdemeanor. Such punishment shall be in addition to any civil relief recoverable under [Code citation omitted].
- B. Any person who attempts to procure the participation, cooperation, agreement or other assistance of any one or more persons to enter into any combination, association, agreement, mutual understanding or concert prohibited in subsection A of this section shall be guilty of a violation of this section and subject to the same penalties set out in subsection A. (HE 2)

The statute defines “damages” to include loss of profits, and it authorizes recovery of treble damages and attorneys’ fees upon a finding of willful and malicious injury by conspiracy to reputation, trade, business, or profession. (HE 2)

Applicant and his co-defendants were represented by counsel hired by Company B. During preparation for trial, Applicant met individually with counsel for several hours. In these pre-trial consultations, Applicant insisted that he had done nothing wrong. (Tr. 87-88.)

Applicant’s case was tried in civil court before a jury. The trial ran for 11 days. At trial, Applicant was called to testify, and he did so for approximately 45 minutes. He was then cross-examined for approximately 20 minutes. His position remained that he had done nothing wrong.³ At the conclusion of the trial, the jury deliberated for several hours. (Tr. 87-90.)

The civil jury found that Applicant was liable in money damages on the following claims: for breach of fiduciary duty, in the amount of \$217,800, with an award of punitive damages of \$217,800; for breach of contract (non-disclosure agreement), in the amount of \$217,800; for violation of a state computer crimes act, in the amount of \$217,800, with punitive damages of \$217,800; for violation, along with the other named defendants, of a state business conspiracy act, in the amount of \$12,341,535; for civil conspiracy, along with the other named defendants, in the amount of \$4,113,845, with punitive damages of \$12,341,535; for misappropriation of trade secrets, in the amount

³ In colloquy with Department Counsel at his hearing, Applicant denied any wrongdoing as an employee of Company A and Company B. When asked by his counsel to explain the conduct involved in the claim of conversion, Applicant replied: “I don’t even know what conversion is.” (Tr. 72, 85-86.)

of \$1,028,461, with punitive damages of \$1,028,461; for conversion, in the amount of \$12,920, with punitive damages of \$25,840. (SOR; Ex. 2.)

Both parties filed motions, and the circuit court judge reviewed the motions and the jury verdict. In October 2010, the judge entered final judgments against Applicant on the jury's findings. The final judgments ordered by the judge were as follows:

Applicant, along with the other named defendants, jointly and severally, was ordered to pay damages of \$12,341,535 for violations of the state business conspiracy act;

Applicant was ordered to pay \$350,000 in punitive damages awarded against him individually; and

Applicant, along with the other names defendants, jointly and severally, was ordered to pay plaintiff's attorney fees totaling \$1,408,877. (Ex. 2.)

After receiving the final judgments, Applicant and his co-defendants met with their counsel, continued to assert that they had done nothing wrong, and requested that their attorneys file an appeal. The attorneys filed an appeal of the decision to the state supreme court, which agreed to hear their appeal in April 2011. The attorneys representing Applicant and his co-defendants filed their opening brief in May 2011, and the opposing party filed its reply brief in July 2011. As of the date of Applicant's DOHA hearing, no date for oral argument had been set by the state supreme court. (Ex. 2, enclosure 2, enclosure 3, enclosure 4; Ex. F; Ex. G; Administrative Notice Document 4; Tr. 15, 73, 91-92.)

The appeal identifies five assignments of error. Two assignments of error cited abuse of discretion by the trial judge on the issue of opinion testimony by plaintiff's expert witness and failure to permit rebuttal testimony by the defendants' expert witness. One assignment of error challenged the trial court's failure to set aside damages based upon a specific model of goodwill damages; another assignment of error alleged trial court error in failing to set aside the jury verdict awarding duplicative trebled and punitive damages. The fifth assignment of error alleged that the trial court erred in failing to set aside damages that were costs of litigation. The defendants' liability under the state uniform trade secrets act and the state business conspiracy act was not challenged on appeal. (Government Administrative Notice Document 4.)

Applicant, Company B, and the other three defendants are jointly and severally liable for civil damages and attorney fees totaling \$13,750,412. Additionally, Applicant is responsible for \$350,000 in punitive damages. In August 2011, Applicant was served

with a garnishment summons by the circuit court. Since that time, he has complied with the summons and made all required payments.⁴ (Ex. O; Tr. 73-74.)

Applicant's gross annual salary from his employment is \$142,000. He also receives \$48,000 to \$50,000 each year in military retirement pay. He has investment accounts totaling approximately \$147,236. Applicant's wife is employed, and she earns about \$35,000 each year. He estimates he has \$150,000 in home equity. Only Applicant's salary is subject to garnishment. He estimates that his family income, each year, after garnishment, is approximately \$150,000. His latest credit report, dated November 28, 2011, shows that all three credit reporting agencies rate his credit as "very good." Applicant provided documentation showing that he is able to comply with the garnishment order, meet his monthly living expenses, and save for his retirement. (Ex. J; Ex. K; Ex. L; Ex. M; Ex. N; Ex. O; Tr. 77-79, 111.)

Applicant acknowledged that, during his lifetime, he would not be able to pay the damages and attorney fees attributable to him in the October 2010 circuit court judge's final order. He believes that, when he dies, most of his assets would be protected from attachment under current law. He stated that he has approached the plaintiff in the civil case several times to request settlement discussions. At his hearing, he stated that he had not received a response. He speculated that the plaintiff might be waiting until the state supreme court rules on the appeal before considering settlement negotiations. (Tr. 94-96.)

Two of Applicant's co-defendants testified as witnesses. One of the witnesses was the chief executive officer and president of the company where Applicant is now employed. The other witness is a vice president of the company and Applicant's supervisor. When discussing the civil judgment against them, one of the witnesses stated that he believed he had done nothing wrong. The other witness stated he did not know why Company A brought the lawsuit against him and the other co-defendants. The witness who was president of the company stated that Applicant was the assistant facility security officer at the company. Both witnesses spoke highly of Applicant and stated that he was reliable and followed rules and regulations. (Tr. 116-150.)

Applicant also offered four letters of character reference. The authors of the letters were former colleagues and friends who had known Applicant for many years. These individuals praised Applicant's outstanding military record, strong work ethic, high moral character, reliability, and trustworthiness. (Ex. B; Ex. C; Ex. D; Ex. E.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and

⁴ Under the law of Applicant's state of residence, a maximum of 25% of his weekly income is subject to garnishment to satisfy the court order. Applicant provided documentation showing that every two weeks \$1,065 is garnished from his salaried earnings. (Ex. I; Ex. J; Tr. 74-76.)

it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an Applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(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 access to classified information will be resolved in favor of 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.

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 to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or 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 Executive Order 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 E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

SOR ¶ 1.c. states that Applicant has filed an appeal of the civil judgments alleged in the SOR. Applicant admitted this allegation. However, the allegation, as framed, does not specify conduct that raises a security concern under Guideline E. Accordingly, I conclude SOR ¶ 1.c. for Applicant.

However, the remaining Guideline E allegations in the SOR do raise security concerns. As the former employee of two defense contractors (Company A and Company B) and the current employee of a third defense contractor, Applicant seeks a security clearance. In June 2010, after an 11-day civil trial, at which he was represented by counsel, testified, and was cross-examined, a jury found against Applicant on the following claims: breach of fiduciary duty; breach of contract; violation of a state computer crimes act; violation, in concert with other defendants, of a state business conspiracy act; civil conspiracy, in concert with other defendants; misappropriation of trade secrets; and conversion. The action was brought against Applicant by his former employer, Company A.

In October 2010, after reviewing the jury verdict and the parties’ motions, the trial court judge entered the following final judgments against Applicant:

Payment of \$12,341,535 in damages for violations of the state business conspiracy act, along with other named defendants, jointly and severally;

Payment, as an individual, of \$350,000 in punitive damages;

Payment of \$1,408,877 in plaintiff’s attorney fees, along with other named defendants, jointly and severally.

Applicant's personal conduct raises security concerns under Guideline E disqualifying conditions AG ¶¶ 16(c) and 16(d). AG ¶ 16(c) reads: "credible adverse information in several adjudicative issue 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 the person may not properly safeguard protected information. AG ¶ 16(d) reads: "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 person may not properly safeguard protected information. This includes but is not limited to consideration of . . . (3) a pattern of dishonesty or rule violations."

Two Guideline E mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(c) if "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." AG ¶ 17(d) might apply if "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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur."

As a federal contractor, Applicant was entrusted not only with classified and sensitive information, but also with Company A's trade secrets and proprietary information. Soon after he left Company A and went to work for Company B, Company A brought a civil action against Applicant alleging civil conspiracy, conversion, breaches of contract and fiduciary duty, as well as violations of his state's computer crimes act, business conspiracy act, and trade secrets act. A jury found Applicant liable for willful and malicious misappropriation of Company A's trade secrets. The presiding judge assessed him \$350,000 in punitive damages. Along with three co-defendants and Company B, Applicant was assessed joint and several damages of \$12,341,535 for violating his state's business conspiracy act. Additionally, he and his co-defendants and Company B were also ordered to pay \$1,408,877 in plaintiff's attorney fees. Applicant insisted he "had done nothing wrong" at his hearing. However, in his appeal to his state supreme court, Applicant and his co-defendants challenged only the damage amounts specified in the lower court decision. They did not contest the lower court's findings of liability.

Applicant knew, or should have known, that his personal conduct, which involved failure to follow rules and regulations for safeguarding his employer's trusted information, was not minor, so remote in time, so infrequent, or occurred under such unique circumstances that it was unlikely to recur and therefore did not cast doubt on

his reliability, trustworthiness, or good judgment. (AG 17(c).) Applicant insisted he had done nothing wrong. Nearly three years after being served with a claim for conversion, he claimed not to know what the claim entailed. Applicant failed to demonstrate that he understood the gravity of the conduct the jury found him responsible for. He also failed to demonstrate that he understood what had caused his unreliable conduct and, as a result, was unable to ensure that such behavior was unlikely to recur. (AG ¶ 17(d).) I conclude, therefore, that neither of the applicable personal conduct mitigating conditions applies to the facts of Applicant's case.

Guideline F, Financial Considerations

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

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant is individually responsible for \$350,000 in punitive damages. Along with his co-defendants, he is jointly and severally liable for \$13,750,612 in attorney fees and damages for violations of his state's business conspiracy act. Since August 2011, \$1,065 has been garnished from Applicant's biweekly pay to satisfy the final judgments ordered by the circuit court judge. This amount reflects 25% of Applicant's weekly salary, the maximum garnishment amount allowed under the law of Applicant's state of residence.

Applicant provided a detailed accounting of his salary from earnings, his military retirement pay, his investments, his home equity, and his wife's salary. He provided a recent copy of his credit report, which shows a "very good" rating. He established that only his salary is subject to garnishment to pay the final judgments. After meeting the terms of the garnishment, Applicant has approximately \$150,000 of annual income remaining.

Applicant and his co-defendants are appealing the amounts of the money damages that were ordered by the trial court. In the meantime, however, he is in full compliance with the terms of the final judgments, and he has sufficient remaining income to meet all of his financial obligations. His financial situation is not a security concern at this time. I conclude that Applicant has rebutted the Guideline F allegation in the SOR, and I conclude the SOR allegation at ¶ 2.a. for Applicant.

Whole-Person Concept

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

- (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. Applicant has a distinguished military record, and he is considered to be a valued employee by his current and former colleagues. However, Applicant failed to mitigate security concerns arising from his personal conduct as a defense contractor. His former employer, Company A, made several serious allegations against Applicant. Those charges were adjudicated in an 11-day civil jury trial. Applicant was represented by counsel; he testified and was cross-examined. After the jury returned a verdict against Applicant and his co-defendants, the presiding judge reviewed the record, affirmed the jury's findings of liability, and entered final judgments specifying money damages. While Applicant denied any wrongdoing, he failed to rebut the allegations, which raised security concerns about his reliability, trustworthiness, and ability to follow rules.

Applicant demonstrated that he is financially responsible and is complying with the trial court's garnishment order. He is doing all that he reasonably can do to pay the money damages assessed him.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude that while Applicant mitigated the financial considerations allegation in the SOR, he failed to mitigate the security concerns arising under the personal conduct adjudicative guideline.

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) - 1.a(7):	Against Applicant
Subparagraphs 1.b(1) - 1.b(3):	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraph 2.a:	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 a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge