



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 11-10004
)
 Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel; and
John B. Glendon, Esq., Deputy Chief Department Counsel

For Applicant: Alan V. Edmunds, Esq.

06/18/2012

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines K (Handling Protected Information), M (Use of Information Technology (IT) Systems), E (Personal Conduct), and F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 23, 2010. On March 7, 2012, the Defense Office of Hearings and Appeals (DOHA) notified him that it was unable to find that it was clearly consistent with the national interest to grant him access to classified information, and it recommended that his case be submitted to an administrative judge for a determination whether to grant or deny his application. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guidelines K, M, E, and F. 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on March 19, 2012; answered it on April 2, 2012; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 27, 2012, and the case was assigned to me on May 2, 2012. DOHA issued a notice of hearing on May 4, 2012, scheduling it for May 21, 2012. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 10 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through P, which were admitted. AX I was admitted over Department Counsel's objection. AX A through H and J through P were admitted without objection. I kept the record open until June 4, 2012, to enable Applicant to submit additional documentary evidence. He timely submitted AX Q through X. Department Counsel did not object to AX R, S, and W, which were admitted. Department Counsel objected to AX Q, T, U, V, and X, which were received over Department Counsel's objection. My rulings on Department Counsel's objections are discussed below. DOHA received the transcript (Tr.) on May 30, 2012.

Administrative Notice

On my own motion, I have taken administrative notice of the provisions of the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-TR), published by the American Psychiatric Association, pertaining to Applicant's mental disorders. Using the Federal Rules of Evidence as a guide, I have noted that Rule 201(c) provides: "A court may take judicial notice, whether requested or not." I have notified counsel for both sides and given them an opportunity to object, in accordance with Rule 201(e), which provides: "A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed." (Hearing Exhibit (HX) I) Neither party objected. (HX II and III.) The specific provisions of DSM-IV-TR that I have administratively noticed are set out below in my "Findings of Fact."

Evidentiary Rulings

Department Counsel objected to AX I, a diagnostic evaluation summary from a psychologist who evaluated Applicant, on the ground that it was irrelevant. (Tr. 23.) I overruled the objection but informed counsel that if I determined, upon reviewing all the evidence, that AX I was irrelevant, I would disregard it and state in my decision that I did not consider it. (Tr. 24.) Department Counsel also objected to AX Q, an updated evaluation from the same psychologist, and AX T, U, V, and X, pertaining to various mental disorders, on the ground that they are irrelevant. (Hearing Exhibit III.)

The Appeal Board has recognized that the DOHA process is designed to encourage administrative judges to err on the side of admitting evidence and then considering a party's objections in deciding what, if any weight to give that evidence.

“Because DOHA proceedings are conducted before impartial, professional fact finders, there is less concern about the potential prejudicial effect of specific items of evidence than there is in judicial proceedings conducted before a lay jury.” ISCR Case No. 04-12449 at 4 (App. Bd. May 14, 2007).

After reviewing all the evidence in the record, I conclude that the AX I and Q through X are relevant. The evidence that Applicant has mental disorders of a type that begin in childhood and that he is receiving treatment for those disorders is relevant to explain the conduct alleged in the SOR, to determine whether such conduct is likely to recur, and as part of my whole-person analysis. AX V has limited relevance because it pertains to a childhood disorder, but it has probative value because the other evidence indicates that Applicant’s mental disorders are the types that usually begin in childhood. AX X has limited relevance, but it also has probative value because it discusses a specific disorder that must be excluded to arrive at the diagnosis in AX I and Q. AX X also is relevant because it pertains to a mental disorder for which one of Applicant’s stepchildren requires treatment.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations in SOR ¶ 4.a and denied all the other allegations in the SOR. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 31-year-old senior systems engineer employed by a federal contractor since February 2011. He obtained an associate’s degree in applied science in December 2005, a bachelor’s degree in information technology in September 2006, and a master’s degree in information technology in September 2009. In addition, he has obtained numerous technical certifications since September 2009. (AX J.)

Applicant married in October 2005. He has three stepchildren, ages 15, 13, and 10. The oldest is bipolar and has attention-deficit/hyperactivity disorder (ADHD), the middle child is autistic, and the youngest has Asperger’s syndrome with traits of ADHD. All three stepchildren require counseling, medication, and special accommodations at school. (Tr. 49-52.) Applicant and his wife have two daughters, ages four and two. The older has not been diagnosed with any special needs, but the younger does not speak and is receiving speech therapy. (GX 2 at I-31, 32; Tr. 52-53.)

Applicant was employed by a local college as a system administrator from May 2000 to December 2003. On his SCA, he stated that he was fired because of a “personality conflict.” According to Applicant, a co-worker who had repeatedly made derogatory comments about Applicant became his supervisor. At some time in late 2003, Applicant was presented with a document stating that customers had complained about him. Applicant believed that the document was fabricated by his supervisor. Nevertheless, he signed the document, agreeing to the findings, without realizing its import. Shortly thereafter, he was fired. (GX 3 at 4; Tr. 41-42.)

Applicant was a full-time student and unemployed from December 2003 to April 2004. (GX 3 at 5.) He was employed as a part-time system administrator for a university from April 2004 to November 2005. He worked as a system administrator for an optical manufacturer from November 2005 to November 2007. On his SCA, he reported that he was fired by the optical manufacturer for insubordination. (GX 1 at 23.) According to Applicant, he, his supervisor, and a female employee were engaged in a closed-door discussion when his supervisor called the female employee a sexually derogatory name. Both Applicant and the supervisor were fired after the female employee filed a complaint. Applicant denied making any comments to the female employee and believes that he was fired because of “guilt by association.” (GX 3 at 6; Tr. 42-43.)

Applicant worked as a system administrator for an automotive manufacturer from November 2007 to March 2008. He was fired at the end of his probationary period. According to Applicant, his supervisor was too busy to give him guidance about his role in the company. He testified that he had difficulty communicating with his supervisor and his peers. His employer told him he was “not a good fit” for the company. (GX 3 at 7; Tr. 43-44.)

Applicant was employed as a system administrator for an IT consulting firm from April to September 2008. He received a security clearance and eligibility for access to sensitive compartmented information (SCI) in August 2008. He left this job to accept a position as a federal employee.

Applicant was employed by another government agency (AGA) from September 2008 to September 2010. He received a verbal reprimand shortly after he began his employment. When he was interviewed by a security investigator in April 2011, he stated that he could not remember the basis for the reprimand, but he remembered that he was told to collaborate more with his co-workers more instead of working alone. (GX 3 at 7.) He received a written reprimand in 2010 for failure to follow procedures. (GX 3 at 8.) An investigation was initiated by the AGA in May 2010 following a report that he had installed an upgrade on the AGA network without authorization. The report of investigation was completed in August 2010. Applicant’s SCI eligibility and collateral clearance were terminated in September 2010, when he resigned by mutual agreement following notice of unsatisfactory performance.

The report of investigation leading to Applicant’s resignation found that, at least once a month, he installed software or hardware upgrades to a computer network without proper authorization or coordination and that he communicated with agency vendors on his home email account. It also found that, on at least two occasions, he copied personal documents from his classified workplace computer onto a compact disk and loaded them on his home computer, and that on multiple occasions he conducted research at home, copied the results of his research onto a compact disk, and then copied the information from the compact disk to an AGA network computer. (GX 10.)

At the hearing, Applicant disagreed with the report of investigation’s finding that he installed upgrades without authorization. He testified that he received conflicting

instructions, with his team lead instructing him not to install the upgrades and the department chief instructing him to install them. He was familiar with the process for approving an upgrade, stating that it was a documented procedure that he had been using for years. (Tr. 89-91.)

At the hearing, Applicant testified that the only document he copied from his workplace network and took home was his personal resume. (Tr. 33.) On cross-examination, he admitted electronically transmitting his leave and earnings statement (LES) from his workplace network to his bankruptcy lawyer. (Tr. 94.)

Applicant testified that he received a number of security briefings, and he knew that he was not permitted to bring a compact disk from home and insert it into a workplace computer. He testified that he was informed by email that his resume was unclassified. (Tr. 92.) The email was not offered in evidence. He downloaded his unclassified resume from a classified computer onto a compact disk supplied by contractor personnel for use at work, and copied the resume from the compact disk to his personal computer. He believed he had approval to download and copy his resume. (Tr. 151-52.) During cross-examination, he appeared to believe that once the AGA determined that his resume was unclassified, it was permissible for him to download it, copy it, and take it home. (Tr. 152-54.)

Applicant admitted using his personal computer and personal email account to solicit quotes from small business vendors after normal working hours. He testified that using personal computers to communicate with vendors was a common practice among contractor employees and that his supervisors were aware of it. He either printed the pricing data at home or he would log onto the same web site at work, using the unclassified network, and print the pricing data at work. He denied copying pricing data onto compact disks and copying the data from the compact disks to his workplace computer. He testified he knew that it would have been a security violation to copy the pricing data from his home computer to a compact disk and then use the compact disk to load the data onto his classified computer. Finally, he testified that if he had been told not to use his personal computer to communicate with vendors, he would have stopped doing it. (Tr. 33-34, 95-96, 147-49.) During the investigation of his conduct, Applicant surrendered his personal computer to investigators, who determined that there was no classified information on it. (Tr. 155-57.)

No evidence was presented showing the specific rules violated by Applicant. The report of investigation lists enclosures including an "Information Systems Acceptable Use Policy" and two documents entitled "Installation and Modification Guide." At the hearing, Applicant declined to answer questions about policies, procedures, and training at the AGA, because he was concerned that they might be classified. (Tr. 80-82.)

Applicant was unemployed from September 2010 to December 2010. He worked as a senior systems administrator for a retirement community from December 2010 until March 2011, when he was terminated for "lack of customer focus." He testified that he was terminated because he questioned the assistant director of nursing about her need

for a cell phone. He was trying to determine if her requirements could be met by a less expensive cell phone, because he was trying to reduce costs. (Tr. 45-46.) He was unemployed until he began his current employment.

Applicant started having financial problems in 2007, which he attributed to failure to maintain consistent employment. His SCA reflects almost continuous employment but frequent job changes. His wife was not employed outside the home, except for occasional short-term periods of employment. She received sporadic child support payments of \$375 for two of her children. Applicant and his wife purchased two cars in 2007 and a new economy car in July 2008. He could not afford the payments on the newest car and he surrendered it to the dealer in February 2009. His change of jobs in 2009 resulted in the need to rent a home at the new location while still owning a home at the old location. His wife was unable to find employment at the new location. (Tr. 47.) He obtained financial counseling in May 2009, and he was advised he had several options, including finding a second part-time job, working overtime, or filing bankruptcy. (GX 9 at 2.)

Applicant filed a Chapter 7 bankruptcy petition in January 2010 and received a discharge in April 2010. (GX 4.) He completed the credit counseling required by the bankruptcy court. (AX K.) His credit bureau report dated February 21, 2012, reflected that, subsequent to his bankruptcy discharge, a \$306 medical bill (SOR ¶ 4.g) was referred for collection in February 2010, a \$56 medical bill (SOR ¶ 4.b) was referred for collection in May 2010, a television satellite service bill for \$151 (SOR ¶ 4.c) was referred for collection in July 2010, two medical bills for \$92 and \$18 were referred for collection in August 2010, and a \$312 medical bill was referred for collection in September 2010. (GX 6 at 1; AX M at 63-66.)

The satellite service bill was paid in full in March 2012. (AX H.) A letter dated May 18, 2012, from the creditor for four of the medical bills reflects that the \$312 bill (SOR ¶ 4.d) was erroneously sent to collection. (AX P.) Applicant testified he is making payments on the three medical debts alleged in SOR ¶¶ 4.b, 4.e, and 4.g, and his testimony is corroborated by the May 2012 letter from the creditor. (Tr. 144.) Applicant denied the \$18 medical bill alleged in SOR ¶ 4.f, and he testified that the creditor has been unable locate any documentation for it. (Tr. 57.)

As of the date of the hearing, Applicant was earning about \$110,000 per year. His wife is employed as a registered nurse, earning about \$55,000 per year. (Tr. 29.)

Applicant testified that he realized that he might have a mental disorder when he had his stepchildren diagnosed. He sought treatment and began taking medication for ADHD on July 21, 2010. His initial dosage was 15 milligrams per day. His dosage was increased to 20 milligrams per day on August 24, 2010, and increased again to 25 milligrams per day on March 4, 2011. He is still taking the March 2011 dosage. (Tr. 110; AX S.) His medications are monitored by his primary care physician, whom he sees every two or three months. (AX Q; AX S; Tr. 38.) Applicant testified that the effect of his

current medications is to give him a “split second” to think about what he intends to say instead of saying it without thinking about how the recipient will interpret it. (Tr. 46.)

Applicant met with a licensed psychologist on March 15, 2011; March 29, 2011; and March 22, 2012. She concluded that Applicant met the diagnostic criteria for the following disorders:¹

314.01: Attention-Deficit/Hyperactivity Disorder (ADHD), Combined Type;

300.00: Anxiety Disorder, Not Otherwise Specified; and

299.80: Pervasive Developmental Disorder (PDD), Not Otherwise Specified.

The psychologist’s narrative discussion includes the following:

[Applicant] discussed significant difficulty during his childhood years with deficits in social interaction skills, particularly with same-age peers. He struggled with understanding social cues, the feelings of others, and how to interact regarding topics not of interest to him. Additionally, he described very intense reactions to changes in routine or when unexpected events occurred. As an adult he has developed positive coping mechanisms to help ameliorate any negative impact on these social perspective-taking difficulties; however, at times his challenges in this area have created problems.

. . .

Overall [Applicant] does not meet sufficient criteria for Asperger Syndrome; however, he does exhibit the history and current issues seen in individuals with PDD, Not Otherwise Specified. [Applicant] very likely would have met criteria for Asperger’s Syndrome as a child/adolescent and young adult; however, he has worked diligently to improve non-verbal communication, understanding social cues, and working with family and co-workers on positive social interaction skills. . . [Applicant] also continues to work consistently on progressing with how he understands social situation, impulse control strategies, and managing anxiety/stress. Overall he has developed a very positive set of coping mechanisms that provide him with the ability to work productively at a high level.

The psychologist recommended that Applicant continue to work with his physician to manage his medications, communicate to his supervisors when he encounters difficulty solving any interaction difficulties with a co-worker, and work with a therapist as needed for anxiety management, social interactions skill development, and strategies for handling his ADHD symptoms. She also recommended that his

¹ Although the psychologist did not specifically cite DSM-IV-TR, she used its terminology and numbering system.

supervisors have a mediation process between Applicant and co-workers and that they communicate to Applicant directly and clearly how they expect him to proceed if interaction problems affect his work effectiveness or the business atmosphere. (AX I; AX Q.²)

ADHD always begins in early childhood, but it may not be diagnosed until later in life. ADHD symptoms can include trouble focusing or concentrating, impulsivity, difficulty completing tasks, disorganization, trouble coping with stress, and unstable relationships. The essential feature of ADHD is “a persistent pattern of inattention and/or hyperactivity-impulsivity.” Individuals with ADHD may fail to give close attention to details, make careless mistakes, fail to follow through on requests or instructions, be forgetful, not listen to others, and fail to follow rules. Individuals with ADHD typically make comments out of turn, fail to listen to directions, initiate conversations at inappropriate times, and interrupt others excessively. Treatment for ADHD includes stimulant drugs or other medications and psychotherapy. The diagnostic criteria for ADHD require a finding that some hyperactive-impulsive or inattentive symptoms were present before age seven. (AX V; AX W; DSM-IV-TR at 85-92.)

Pervasive development disorder (PDD) is a broad category of mental disorders that are usually evident in childhood and are characterized by severe and pervasive impairment in several areas of development: reciprocal social interaction skills, communication skills, or the presence of stereotyped behavior, interests, and activities. The specific disorders in this category include autistic disorder, Rett’s disorder, childhood disintegrative disorder, Asperger’s disorder (also called Asperger’s syndrome), and PDD not otherwise specified (NOS). PDD NOS is the appropriate diagnosis when there is a severe and pervasive impairment in the development of reciprocal social interactions associated with impairment in either verbal or nonverbal communication skills or with the presence of stereotyped behavior, but the criteria are not met for a specific pervasive development disorder (such as Asperger’s disorder or autism), schizophrenia, schizotypal personality disorder, or avoidant personality disorder. (DSM-IV-TR at 69-84.)

The essential features of Asperger’s syndrome are “severe and sustained impairment in social interaction . . . and the development of restricted, repetitive patterns of behavior, interests, and activities.” It may involve “marked impairment in the use of multiple nonverbal behaviors (e.g., eye-to-eye gaze, facial expression, body postures and gestures) to regulate social interaction and communication.” Young adults may “lack understanding of the conventions of social interaction.” (DSM-IV-TR at 80.)

Anxiety disorder NOS includes disorders with prominent anxiety or phobic avoidance that do not meet the criteria for any specific anxiety disorder or adjustment disorder. (DSM-IV-TR at 484.) Applicant’s anxiety disorder is of minimal relevance in this case.

² AX Q repeats most of the analysis in AX I, but is updated to reflect the March 2012 assessment.

Applicant's current facility security officer (FSO) submitted a letter on his behalf and testified at the hearing. The FSO stated that he was aware of Applicant's diagnosis of ADHD. In his letter, he stated that Applicant "has been nothing short of inspirational" in managing his ADHD. (AX D.) At the hearing, the FSO testified that he was familiar with the allegations in the SOR, although he did not know all the details about the security violations that led to Applicant's resignation in lieu of termination in September 2010. (Tr. 124-25.) He characterized Applicant's performance as "exemplary." Although they had hoped to obtain a security clearance for Applicant in time for a specific contract, that deadline had passed at the time of the hearing, but they want to have Applicant available for other contracts. (Tr. 126-27.)

The president and chief executive officer (CEO) of the company where Applicant is currently employed joined in the FSO's letter and also testified at the hearing. He testified that his company recruited Applicant because of his IT experience and has promoted him to senior systems engineer, the highest engineering level except for the company's chief technologist. The CEO was familiar with the allegations in the SOR and had discussed them with Applicant. He also was aware that Applicant was dealing with medical issues. He testified that Applicant's conduct and performance as portrayed in the SOR was contrary to what he had observed since hiring Applicant. The CEO unqualifiedly recommended that Applicant receive a security clearance. (Tr. 130-39.)

A U.S. Air Force captain, who has known Applicant since 1994, describes him as a loyal and trustworthy friend who can be entrusted with national security information. (AX A.) A professional colleague, who has known Applicant for about six years, states that his work ethic, intelligence, and integrity are above reproach. (AX B.) A co-worker describes Applicant as an "exemplary employee," who has repeatedly demonstrated his professionalism, technical knowledge, honesty, trustworthiness, and integrity. (AX C.) A former mentor on a special project stated that Applicant worked with integrity and team spirit, and he was "gracious about criticism and advice." (AX E.) An Army National Guard captain who met Applicant in 2001 describes him as an honest, trustworthy, and loyal friend and recommends that he be granted a security clearance. (AX N.)

Policies

"[N]o 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 applicants 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these

guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline K, Handling Protected Information

The SOR alleges that Applicant was cited by an AGA for committing security violations by copying data from a classified computer system to unclassified media,

removing it from his workplace, and loading the data on his personal computer (SOR ¶ 1.a). The security concern under this guideline is set out in AG ¶ 33: “Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.”

The disqualifying conditions relevant to this case are:

AG ¶ 34(b): collecting or storing classified or other protected information at home or in any other unauthorized location;

AG ¶ 34(c): loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, “palm” or pocket device, or other adjunct equipment;

AG 34(g): any failure to comply with rules for the protection of classified or other sensitive information; and

AG 34(h): negligence or lax security habits that persist despite counseling by management.

AG ¶¶ 34(b), (c), and (g) are established. The SOR did not specify what data Applicant was alleged to have copied. The AGA's report of investigation did not identify what data he was found to have copied and taken home. Department Counsel presented no evidence showing what, if any, rules were violated. Applicant admitted copying his resume to a compact disk, taking it home, and loading it onto his home computer. He also admitted electronically transmitting his leave and earnings statement to his bankruptcy attorney. There is no evidence that the resume and LES were classified, and they were not “protected information” within the meaning of this disqualifying condition because they were Applicant's records. However, Applicant admitted that there was a risk of classified or protected information being embedded in external media whenever information is downloaded from a classified system. The AGA report of investigation found that he had violated internal AGA rules, and the enclosures to the report list an information systems use policy and two installation and modification guides. This evidence is “more than a scintilla” and is sufficient to raise AG ¶¶ 34 (b), (c), and (g).

AG ¶ 34(h) is established. The list of enclosures to the AGA report lists “Email Documentation of August 2009 Counseling.” While the email documentation of counseling was not attached to the report of investigation, this notation is sufficient to establish that Applicant was counseled about his security habits in August 2009. In addition, Applicant admitted to a security investigator that he was verbally reprimanded

shortly after he began working at the AGA and received a written reprimand in mid-2010.

The relevant mitigating condition under this guideline is AG ¶ 35(a): “so much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.” No other enumerated mitigating conditions are relevant.

Applicant's last security violation occurred more than two years ago, but this time period is of little probative value because he has not been working in a classified environment since he resigned from the AGA position in September 2010. However, the evidence reflects that Applicant's security violations occurred before he began receiving treatment for his ADHD and PDD.

Applicant's termination in March 2011 for “lack of customer focus” was not related to any security violations, and it occurred at about the time the dosage of his medication was increased to its current level and he had his first two consultations with the psychologist. The incident leading up to this termination occurred at some time prior to his termination. The March 2011 termination is relevant to the extent that it suggests Applicant's inability or unwillingness to follow rules even after he began receiving treatment for ADHD and PDD.

The testimony of Applicant's current supervisors and the diagnostic assessment of his psychologist reflect that he has responded well to his current level of medication and the psychotherapy. He has become a valued and trusted employee, and he has not repeated the behavior reflected in the SOR. Thus, I conclude that his security violations were the product of unusual circumstances, *i.e.*, his ADHD and PDD, and they are unlikely to recur. Thus, I conclude that AG ¶ 35(a) is established.

Guideline M, Use of Information Technology Systems

The SOR cross-alleges SOR ¶ 1.a under this guideline. The concern under this guideline is: “Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information.” AG ¶ 39.

The relevant disqualifying conditions are:

AG ¶ 40(e): unauthorized use of a government or other information technology system;

AG ¶ 40(f): introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without

authorization, when prohibited by rules, procedures, guidelines, or regulations; and

AG ¶ 40(g): negligence or lax security habits in handling information technology that persist despite counseling by management.

AG ¶¶ 40(e) is established, for the reasons set out in the above discussion of AG ¶ 34(g). Applicant's unauthorized installation of upgrades to the AGA network establishes AG ¶ 40(f).³ AG ¶ 40(g) is established for the reasons set out in the above discussion of AG ¶ 34(h).

The relevant mitigating condition under this guideline is AG ¶ 41(a), which is identical to AG ¶ 35(a), discussed above. For the reasons set out in the above discussion, I conclude that this mitigating condition is established.

Guideline E, Personal Conduct

The SOR alleges that Applicant was terminated from a job in December 2003 due to a personality conflict (SOR ¶ 3.a), terminated from a job in November 2007 for insubordination and sexual harassment (SOR ¶ 3.b), terminated from a job in March 2008 due to a personality conflict (SOR ¶ 3.c), terminated from a federal job with an AGA and had his security clearance and SCI eligibility suspended in September 2010 (SOR ¶ 3.d), and terminated from a job in March 2011 for lack of customer focus (SOR ¶ 3.e). The SOR also cross-alleges a Chapter 7 bankruptcy discharge and six delinquent debts that are discussed below under Guideline F (SOR ¶ 3.f).

The concern under this guideline is set out in AG ¶ 15: "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." The evidence establishes SOR ¶¶ 3.a through 3.e, except that it does not establish that Applicant was involuntarily terminated by the AGA. He was not involuntarily terminated by the AGA; he resigned in lieu of termination.

Applicant's employment record establishes the following disqualifying conditions under this guideline:

AG ¶ 16(c): 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,

³ The unauthorized installation of upgrades was not alleged in the SOR. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). I have considered the evidence of unauthorized installation of upgrades for these limited purposes.

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): 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 . . . (2) disruptive, violent, or other inappropriate behavior in the workplace; [and] (3) a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Being ill-suited for a customer-oriented job, lack of tact, social ineptitude, or having a disagreeable personality are not necessarily qualities that raise security concerns under Guideline E, unless they result in "disruptive, violent, or other inappropriate behavior." However, inability or unwillingness to follow rules and instructions, inappropriate sexual comments, or inattention to details can raise questions about an applicant's trustworthiness, reliability, and good judgment.

The following mitigating conditions under this guideline are relevant:

AG ¶ 17(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;

AG ¶ 17(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

AG ¶ 17(c) is established for the reasons set out in the above discussions of AG ¶¶ 35(c) and 41(a). AG ¶¶ 17(d) and (e) are established because Applicant has acknowledged his behavior, obtained treatment, and has established himself as a

trustworthy, dependable employee. He has been open and candid about his past employment problems and enjoys a good reputation with his current employer, thereby reducing his vulnerability to exploitation, manipulation, or duress. As discussed below under Guideline F, he has gained control of the mental disorders that contributed to his Chapter 7 bankruptcy, paid or made payment arrangements for his delinquent medical bills, and has disputed an \$18 medical bill that is insignificant from a national security viewpoint.

Guideline F, Financial Considerations

The SOR alleges that Applicant filed a petition for Chapter 7 bankruptcy in January 2010 and received a discharge in April 2010 (SOR ¶ 4.a), and has six delinquent debts (SOR ¶¶ 4.b-4.g.)

The concern under this guideline 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.

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money. It encompasses concerns about an appellant'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).

Applicant's financial record establishes two disqualifying conditions under this guideline: AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations. Security concerns based on financial considerations may be mitigated by any of the following conditions:

AG ¶ 20(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;

AG ¶ 20(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; or

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is established. Applicant's delinquent debts have been numerous and some are not fully resolved. However, his past impulsiveness and inattention were due at least in part to his ADHD and PDD, which are unusual circumstances. The medical debts alleged in SOR ¶¶ 4.b and 4.g were referred for collection before Applicant began taking medication. The debts alleged in SOR ¶¶ 4.c, 4.e, and 4.f were referred for collection at about the time Applicant first began taking medication. All the debts were delinquent well before he began seeing his psychologist and the dosage of his medication was increased to its current level, which is almost double the initial dosage. For these reasons and the reasons set out in the above discussions of AG ¶¶ 35(a) and 41(a), I conclude that AG ¶ 20(a) is established.

AG ¶ 20(b) is partially established. Applicant's financial problems leading to his Chapter 7 bankruptcy were due in part to impulsive and inattentive financial management. However, the medical bills alleged in the SOR are attributable to the medical care and special services required by his three stepchildren. He has acted responsibly regarding his medical bills by staying in contact with the creditor and making payment arrangements for three medical bills alleged in SOR ¶¶ 4.b, 4.e, and 4.g. He successfully disputed the medical bill alleged in SOR ¶ 4.d. He has challenged the \$18 medical bill alleged in SOR ¶ 4.f. The dispute regarding SOR ¶ 4.f is not resolved, but the small amount involved makes it of minimal security significance.

AG ¶ 20(c) is established. Applicant received financial counseling in May 2009 and November 2009, and his remaining delinquent debts are being resolved.

AG ¶ 20(d) is established. Applicant paid the delinquent satellite television bill alleged in SOR ¶¶ 4.c, successfully disputed the medical debt in SOR ¶ 4.d, and negotiated payment arrangements for the medical debts alleged in SOR ¶¶ 4.b, 4.e, and 4.g. The \$18 medical bill is not resolved. However, an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

AG ¶ 20(e) is established for the medical debt alleged in SOR ¶ 4.d. It is not established for the debt alleged in SOR ¶ 4.f. The remaining debts alleged in the SOR were not disputed.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines K, M, E, and F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is an intelligent well-educated adult. He was candid, sincere, credible, calm, and focused at the hearing. He has struggled with ADHD and PDD during most of his working life. He realized that he needed help when he sought counseling and treatment for his stepchildren. He has obtained treatment, and his current employer has not observed the behaviors that the SOR reflects. His psychologist's analysis indicates that he needs some special considerations from his supervisors, but his supervisors have demonstrated by word and deeds that they are willing to work with him. During the 15 months preceding the hearing, he gained a reputation as a talented, trustworthy, and reliable employee. He is no longer the troubled and dysfunctional person portrayed in the SOR.

The SOR did not allege security concerns under Guideline I (Psychological Conditions). To the contrary, Department Counsel argued that evidence of Applicant's ADHD, PDD, and anxiety was irrelevant. I have concluded that the evidence of his ADHD and PDD is relevant and that it, along with other considerations, mitigates the security concerns set out in the SOR. I have also noted that any security concerns raised by Applicant's ADHD and PDD would be mitigated under AG ¶¶ 29(a) and (b), because they are treatable, Applicant has complied with his treatment program, and he has received a favorable prognosis from his psychologist.

After weighing the disqualifying and mitigating conditions under Guidelines K, M, E, and F, evaluating all the evidence in the context of the whole person, and mindful of my obligation to resolve close cases in favor of national security, I conclude Applicant has mitigated the security concerns based on handling protected information, use of information technology systems, personal conduct, and financial considerations. Accordingly, I conclude he has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline K (Handling Protected Information): FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline M (Use of IT Systems): FOR APPLICANT

Subparagraph 2.a: For Applicant

Paragraph 3, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 3.a-3.f: For Applicant

Paragraph 4, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 4.a-4.g: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge