DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 16-01262
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Troy L. Nussbaum, Esq.

02/16/2018

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the criminal conduct and financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 17, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct) and Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).[1]

Applicant responded to the SOR on September 21, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 20, 2017.

[1] I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 2, 2017, scheduling the hearing for August 30, 2017. I convened the hearing as scheduled.

I appended to the record as Hearing Exhibits (HE) 1-3, respectively, the Government's discovery letter and exhibit list, and Applicant's exhibit list. I admitted Government Exhibits (GE) 1 through 3 and 6 through 11 in evidence without objection. Counsel objected to GE 4 and 5, on the basis that they were reports of investigation and could not be admitted without an authenticating witness. I overruled counsel's objections and admitted GE 4 and 5 in evidence.[2] Applicant testified, called four witnesses, and submitted Applicant's Exhibits (AE) A through U, which I admitted in evidence without objection.

At Applicant's request and with no objection from the Government, I left the record open until September 13, 2017, for the submission of additional documentation. Applicant timely provided additional evidence, which I marked as AE V through Z and admitted in evidence without objection. I marked Applicant's continued exhibit list as HE 4. DOHA received the hearing transcript (Tr.) on September 8, 2017.

Findings of Fact

Applicant admitted in part and denied in part SOR ¶ 1.a, and denied SOR ¶ 2.a. He is 37 years old. He has worked as an analyst for a defense contractor since June 2015. He worked for the same defense contractor from April 2011 until he was laid off in December 2014, and he worked solely in a part-time capacity from January through June 2015. He was first granted a DOD security clearance at the age of 18. In August 2007, his clearance was granted with a warning that failure to resolve any delinquent debts or any other subsequent unfavorable information may result in suspension. Applicant did not recall receiving documentation of the warning, but he recalled that he was told to keep his debts current. In June 2014, his clearance was suspended.[3]

Applicant earned an associate's degree in 2006 and a bachelor's degree in 2010. As of the hearing, he was in the process of obtaining a master's degree. He married in 2001, divorced in 2003, and remarried in 2009. He has three children.[4]

Applicant enlisted and served on active duty in the U.S. Army from July 1998 until December 2001, when he received an honorable discharge due to medical conditions. He re-enlisted in March 2005 and was honorably discharged in September 2005, due to limitations as a result of an injury. He then served in the National Guard (NG) for state A beginning in October 2005. He was selected for and attended Officer Candidate School (OCS) from February 2006 to August 2007, upon which time he was

[2] Tr. at 13-16.

[3] Response to the SOR; Tr. at 36-47,77-80, 90-91, 107-110, 116, 142, 148-150; GE 1, 8; AE C, D, E, J, N, O, P, Q, Z.

[4] Response to the SOR; Tr. at 37, 46-47, 91, 109, 142, 166; GE 1; AE N, O.

commissioned as an officer. He served in the officer accession task force from July 2007 to April 2008; he trained to become an analyst from April to September 2008; he deployed overseas from 2008 to late 2010; upon his 2010 return from overseas deployment, he served as an officer. He received a General Under Honorable Conditions discharge from the NG in April 2014.[5]

The SOR alleges that an April 2012 investigation by the U.S. Army revealed that, between 2007 and 2008, Applicant knowingly received $30,600 in Student Loan Repayment Program (SLRP) funds and a $20,000 Officer Accession Bonus (OAB), for which he was unauthorized. In May 2014, he was charged in state A with felony grand theft and fraud. He pled guilty to misdemeanor larceny. He was sentenced to 100 hours of community service, four years of probation, and ordered to pay at least $30,600 in restitution. The SOR also alleges that Applicant owes the U.S. Government approximately $30,600 in restitution.

Applicant served in the NG under state Title 32 orders. From July 2007 to August 2010, he was activated under federal Title 10 orders with a Military Occupational Specialty (MOS) of 35D, which is a commissioned officer specialty. As a commissioned officer, he had the ability to serve under Title 10 orders and command federal troops. His stated purpose in his Title 10 orders, during the period from July 2007 to April 2008, was "Army Reserve National Guard RNR Global War on Terrorism Active Duty Special Work Specialty Recruiting," which caused confusion as to whether he was a recruiter. Within the U.S. military, only enlisted members with the requisite training were authorized to carry the title of recruiter. Within the U.S. Army, the MOS for a recruiter was 79R, and such individuals received specific, recruiter-focused training and guidance, as well as additional training in bonuses and incentives. Officers could not be recruiters.[6]

Applicant maintained he was not a recruiter, though he may have subjectively and on occasion referred to himself as one. He never received training or education in special incentive bonuses or student loan repayments while he was an infantryman in the U.S. Army or while he served in the NG. He provided information to serving state NG members and individuals enlisted in The Reserve Officers' Training Corps (ROTC), about the ways in which they could become commissioned officers in the U.S. Army. He also provided training and preparation for noncommissioned and warrant officers.[7]

A retired major, Applicant's then-officer-in-charge and immediate supervisor, stated in a 2013 letter that Applicant's duties during the period from July 2007 through April 2008 did not include recruiting applicants into the NG. The retired major stated that Applicant was not a recruiter with the MOS 79R. In addition, one of Applicant's witnesses, the northern field commander for recruiting and retention for the NG in state A and an armed forces member for 26 years, served on the same team as Applicant

[5] Tr. at 36-47, 77-80, 90-91, 107-108, 110, 116, 142, 148-150; GE 1, 8; AE C, D, E, J, N, P, Q, Z.

[6] Tr. at 36-47, 77-80, 90-91, 107-108, 110-116, 142, 148-150; GE 8; AE C, D, E, Q, Z.

[7] Tr. at 36-47, 77-80, 90-91, 107-108, 110-116, 142, 148-150, 195-213; GE 8; AE C, D, E, M, Q, Z.

during the 2007 to 2010 timeframe. She testified that neither she nor Applicant were recruiters. The confusion as to whether Applicant was a recruiter led to his charges, as discussed below.[8]

In 2006, while in an infantry battalion serving the NG and also while in OCS, Applicant learned from his command about a pre-commissioning, personal loan. The loan was available only to those individuals who were students in service academies, the ROTC, or in OCS, or any individual who received a commission one year prior to applying for the loan. In July 2006, while in OCS but not yet a commissioned officer, and while enrolled in college full-time, Applicant obtained the loan in the amount of $25,000. He used the loan to pay his school and living expenses, as he would have with any federal student loan. He did not recall whether he used some of the loan money to pay the balance on a repossessed car loan. He intended to repay the loan upon commission.[9]

In September 2007, Applicant met a master sergeant at an accession task force conference, who was then the incentive and bonus manager and subject-matter expert for state A's NG. The master sergeant's role at the conference was to provide training to enlisted recruiters. During the conference, she inquired of Applicant whether he had any student loans, and he informed her of his $6,000 Stafford student loan. He could not recall when he incurred the loan, but he recalled that he received it as an enlisted member while he attended college for either his associate's or bachelor's degree. He inquired of the master sergeant whether his student loan was eligible for repayment, given that he had just been commissioned as an officer two months prior. The master sergeant informed him that it was, so long as he received the student loan while he was enlisted, prior to becoming an officer. He then provided her with a summary sheet containing the student loan institution's name, his loan account number, and the loan balance. His student loan was subsequently paid directly to the student loan provider.[10]

In approximately late 2007 or early 2008, Applicant interacted with the master sergeant a second time, when he went to the master sergeant's headquarters office for a training event. Prior to their interaction, Applicant had learned from another officer, a colleague with whom he worked on the accession task force and who received the same pre-commissioning, personal loan as Applicant did in 2006, that the master sergeant had indicated the loan might be eligible for repayment through the SLRP since it was incurred while enlisted and prior to being commissioned as an officer. Applicant inquired of the master sergeant whether his pre-commissioning, personal loan was eligible for repayment, since he used it while he attended school full-time to offset school and living expenses. At the master sergeant's request, he provided her with the account number, institution name, remaining loan balance, and banking information by email. He did not provide her with documentation from the loan provider or an accounting of his use of the loan money, as he followed her instructions and relied on

[8] Tr. at 36-47, 77-80, 90-91, 107-108, 110-116, 142, 148-150, 195-213; GE 8; AE C, D, E, M, Q, Z.

[9] Tr. at 37, 46-50, 56-57, 116-117, 120, 160-162; GE 1, 6, 7, 11; AE C.

[10] Tr. at 50-54, 116-120, 155-156, 160, 162-166; GE 1, 4, 5, 6, 7, 11; AE C.

her as the subject-matter expert. In March 2008, a $24,000 payment was made directly to the loan's banking institution with the money from the SLRP.[11]

When Applicant enlisted in the NG, he learned that he was eligible for and he received a $15,000 Prior Service Enlistment Bonus (PSEB). In 2007, he learned that he was eligible for and he received a $20,000 OAB, available to all officers upon completion of their officer basic course and who were in a specialty skill MOS or deploying. As he had completed his officer basic course in September 2008, was an officer, and was on deployment orders by November 2008, he submitted paperwork to the master sergeant for his bonus. He did so under the direction of the OCS leadership. He did not specifically reference the $20,000 OAB. He subsequently received the $20,000 OAB in November 2008, in four payments of $5,000.[12]

Applicant understood that the master sergeant's job was to provide guidance to recruiters and enlisted members. He understood that he was neither at the time. He did not think to consult with an individual authorized to provide guidance to an officer, like himself, because he received the student loan and the pre-commissioning loan while he was an enlisted member. He also trusted that the master sergeant knew, as the state's subject-matter expert, which bonuses he was entitled to receive. He believed that even if he had sought additional guidance, he would have been referred back to the master sergeant since she was the subject-matter expert. He acknowledged that he knows better now.[13]

The first time it occurred to Applicant that the master sergeant had done something wrong was in 2010, after the DOD Office of the Inspector General had begun their investigation into the master sergeant. Prior to meeting the master sergeant in September 2007, and up through his second interaction with her in early 2008, Applicant had not heard rumors that the master sergeant was paying loans that were not so entitled. He had not been told to specifically ask the master sergeant for repayment of loans that were ineligible. He did not give the master sergeant anything to obtain repayment or in return for her processing of his repayments. He was friendly towards her as a matter of course, and he gave her M&M candies and possibly an M&M keychain because he knew she liked M&M's. He did not consider these minimally valued items to be gifts.[14]

Subsequent to the master sergeant's retirement from the NG, an investigation led by the Federal Bureau of Investigation (FBI), into the bonuses and incentives paid during her tenure, culminated in her 2011 conviction in state superior court for misappropriation of federal funds. She was ordered to repay the U.S. Government $15,200,000 and serve 30 months in a federal correction facility. She admitted to

[11] Tr. at 54-57, 116-117, 120-129, 155-157, 160-162; GE 1, 4, 5, 11; AE C.

[12] Tr. at 57-61, 130-133; GE 1, 11; AE C.

[13] Tr. at 50-54, 61-62; GE 1; AE C.

[14] Tr. at 125-129, 155-160, 167-169; GE 11; AE C.

knowingly processing ineligible bonuses and incentives on behalf of her fellow NG members, due to her anger with the NG's leadership.[15]

In April 2012, the NG issued Applicant a General Officer Memorandum of Reprimand (GOMR). The GOMR stated that he knowingly received $30,600 from the SLRP, the $15,000 PSEB, and the $20,000 OAB, for which he was not entitled. Applicant testified that the GOMR was based on his Title 10 orders and the improper assumption that he was a recruiter with the requisite training. He also testified that the state NG's determination was premature.[16]

Applicant was tried by court-martial under state A's NG judicial system, for violations of Article 92 (failure to obey order or regulation), Article 121 (larceny and wrongful appropriation of property), and Article 132 (fraud against the United States). He was alleged to have committed larceny in the sum of $30,600 from the SLRP. During the court-martial proceedings, Applicant worked as a defense contractor in state B. Thus, the NG would put him on orders, and he would then fly to state A to attend the proceedings. The case was dismissed in March 2013 due to jurisdictional issues.[17]

In April 2014, Applicant was charged in a civilian capacity in state A superior court with felony grand theft of $30,600 from the SLRP. As Applicant was working in state B, he incurred $1,600 in monthly travel expenses to attend the hearings in state A. When his clearance was suspended in June 2014, his ability to work as a defense contractor was harmed. He consequently received a layoff notice and a 37% pay deduction. His wife was not working full time, as he was his family's sole breadwinner. Balancing the costs of flying between state B and state A against the potential timeline of 12 to 24 months before his case would go to trial, Applicant decided to take the prosecution's deal in May 2015. He pled guilty to misdemeanor larceny. In addition to Applicant, the NG prosecuted and obtained guilty pleas from three other individuals. At the time of his plea, he understood the implications that a felony conviction could have on his clearance. His attorney did not advise him of the full implications that a misdemeanor criminal conviction could have on his clearance.[18]

Applicant understood that he pled guilty to the misdemeanor larceny charge. He understood that his guilty plea meant that he took responsibility for the charge. He was sentenced to one year in jail, suspended; four years of probation; 100 days of community service; and ordered to pay $30,600 in restitution to the Defense Finance and Accounting Service (DFAS). He remains on probation until March 2019, though he may be found to have fulfilled his probation requirement earlier, upon successful completion of his community service and full $30,600 restitution to DFAS. As of the hearing date, he completed 25 days of community service, as his ability to perform

[15] Tr. at 62-65, 86-88, 162, 169-171; GE 1, 4, 5; AE G, S, T, U.

[16] Tr. at 58-59, 62, 75-77, 88-94, 132-133, 143-150, 162-167; GE 1, 3, 4, 5, 9; AE C, D.

[17] Tr. at 58-59, 62, 75-77, 88-94, 132-133, 143-150, 162-167; GE 1, 3, 4, 5, 9; AE C, D.

[18] Tr. at 88-94, 102-106, 133, 141-143, 152-153; GE 1, 2, 3, 6; AE C, M.

labor-intensive service was hampered by his back injury, in which he has a 70% disability rating from the U.S. Department of Veterans Affairs (VA). He located an alternate community service organization through which he intended to fulfill the remaining court-ordered community service. In accordance with a repayment schedule he reached with DFAS prior to the commencement of the state criminal proceedings, he had also made 23 payments at $50 to $100 monthly, with his last payment in May 2017, as further discussed below.[19]

Applicant received a June 2017 letter from the Army Board of Correction of Military Records (ABMCR). In that letter, the ABMCR indicated that as he was one of the NG members that had a debt action or certified recoupment with the DFAS, it had received an advisory opinion from the National Guard Bureau (NGB) and it could adopt the opinion's recommendations wholly or partially, or reject them altogether. The NGB's advisory opinion stated that as a commissioned officer, Applicant was ineligible for money from the SLRP; Applicant, in his rebuttal to the GOMR, contended that he was informed by the master sergeant that he was eligible; and while there was no definitive evidence to support Applicant's contention, there was also no definitive evidence to demonstrate that he acted deceitfully or with intent to defraud the U.S. Government.[20]

The NGB's opinion continued to state that the GOMR did not provide definitive evidence to support Applicant's knowledge of wrongdoing, but merely suggested that he should have known he was ineligible for the SLRP because of his position as an officer recruiter, though that position was a temporary one in which he lacked any formal training. It stated that while the pre-commissioning, personal loan Applicant received payment toward was not a qualifying education loan, ". . . it was reasonable to see how he may have found it feasible that he could qualify for such payment with his peers receiving the same incentive and the subject matter expert validating his eligibility." The opinion concluded that based on the above-stated factors and Applicant's good service, Applicant could retain the $30,600 SLRP incentive offered to him by the NG. It also concluded that Applicant should repay portions of both the OAB and the PSEB totaling $17,500, for which he was ineligible.[21]

Applicant responded to the ABMCR's letter and requested that, should it agree with the NGB's conclusion that he repay $17,500, he receive credit for any payments he previously made to DFAS directly and through payroll deductions. In June 2017, the ABMCR granted Applicant full relief in its final determination and waived its opportunity to recoup any money from him. As such, the ABMCR approved the request for waiver of recoupment of the $15,000 PSEB incentive, the $20,000 OAB incentive, and the $30,600 SLRP incentive, and Applicant was to be reimbursed for any previously recouped money. The ABMCR stated that it was ". . . unable to determine that Applicant knew, or reasonably should have known, that he was ineligible for all the incentive pay he received," as he heavily relied on the state incentive manager regarding his eligibility.

[19] Tr. at 71, 80-98, 101-106, 133-143, 150-155, 168-169, 172; GE 1, 2, 3, 6, 10; AE C, F, I, M, W, X, Y.

[20] Tr. at 65-74, 143-148, 162-167; GE 9, 11; AE A, B, C, D, F, U.

[21] Tr. at 65-74, 143-148, 162-167; GE 9, 11; AE A, B, C, D, F, U.

It stated that its conclusion was based on the irreconcilable administrative errors presented in the evidence. It further stated that its decision would be forwarded to the NGB, who would then take action to correct Applicant's records.[22]

As of the hearing, the ABMCR refunded approximately $3,246 in money garnished from Applicant's prior military pay and payments he previously made directly to DFAS after he left service in April 2014. DFAS documentation from July 2017 reflected that the account status for Applicant's out-of-service debt carried a zero balance. Whereas while he was in service, he received a letter from the state NG incentive task force in the summer of 2012, notifying him that his payroll would be deducted to repay the SLRP money he received at 20%, rather than 80%, because it had concluded that he received the money at no fault of his own. In addition, when he left service, DFAS notified him by letter that he owed $65,000, comprised of the totality of money he received from the SLRP, the OAB, and the PEB. Applicant testified that the DFAS zero balance and the ABMCR's refund of his payments reflected the U.S. Government's waiver of its opportunity to recoup the money, thereby forgiving his debt. Though the state A superior court ordered Applicant to repay the restitution to DFAS, Applicant did not provide evidence to show that the ABMCR's determination supplanted the sentence by state A's superior court, or that the state superior court accepted the DFAS zero balance as satisfaction of its order.[23]

Applicant recently discovered exculpatory information in prosecution transcripts for the convicted master sergeant that he was not provided in discovery prior to his guilty plea. Consequently, he hired counsel who filed a motion in August 2017 to withdraw his guilty plea. The motion was accompanied by the ABMCR's determination that Applicant did not deceitfully intend to defraud the U.S. Government. Applicant also intended to provide the exculpatory information contained in the prosecution transcripts for the master sergeant and the DFAS documentation reflecting a zero balance.[24]

Applicant's witnesses at hearing described him as a trustworthy, hard-working, ethical, loyal, and transparent individual with unquestionable integrity. Those who worked with him also described him as a stellar employee. His character references described him in the same manner. His defense contractor commended his performance in 2012, and gave him the highest rating of "far exceeds expectations" in 2015 to 2016. He was rated "fully qualified" or "best qualified" in officer evaluation reports from 2008 through 2013. He has received numerous medals and commendations. As of February 2016, he did not have any other delinquent debts.[25]

[22] Tr. at 65-74, 80-86, 97-98, 134-141, 150-155; GE 2; AE A, B, C, F, I, U, W, X, Y.

[23] Tr. at 71, 80-86, 97-98, 135-141, 150-155; GE 2, 3, 10; AE F, I, W, X, Y.

[24] Tr. at 98-99, 135-141, 154; AE F, I, R, V.

[25] Tr. at 99, 102, 174-213; GE 6, 7; AE H, J, K, L, M, N, P.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the 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(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

> Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

> (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted;
>
> (c) individual is currently on parole or probation; and
>
> (e) discharge or dismissal from the Armed Forces for reasons less than "Honorable."

Applicant argued that he unknowingly received funds totaling $65,000 from the SLRP, the OAB, and the PEB, because he relied on the guidance provided him by the incentive and bonus manager, and subject-matter expert, for state A's NG. He also argued that his charges stemmed from the erroneous conclusion that he was a recruiter. But he pled guilty in 2014 to misdemeanor larceny, and he understood that by doing so, he took responsibility for the charge. AG ¶ 31(b) applies.

Applicant remains on probation until March 2019. AG ¶ 31(c) applies.

Applicant received a General Under Honorable Conditions discharge from the NG in April 2014. AG ¶ 31(e) does not apply.

I have considered all of the mitigating conditions under AG ¶ 32 and considered the following relevant:

> (a) so much time has elapsed since the criminal 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;
>
> (c) no reliable evidence that the individual committed the offense; and
>
> (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher

education, good employment record, or constructive community involvement.

As stated above, Applicant understood that his guilty plea to misdemeanor larceny meant that he took responsibility for the charge. AG ¶ 32(c) does not apply.

Applicant's 2014 misdemeanor criminal conviction is a significant blemish on his otherwise stellar record. It happened under such unusual circumstances that are unlikely to recur, as already discussed above. Though he argued that he unknowingly received the funds because he relied on the master sergeant's guidance, and that his charges stemmed from the erroneous conclusion that he was a recruiter, he acknowledged that he took responsibility by pleading guilty to the misdemeanor larceny charge. I conclude that there is no doubt about Applicant's current reliability, trustworthiness, and judgment. AG ¶ 32(a) applies.

While Applicant remains on probation until March 2019, there is evidence of successful rehabilitation. He has an otherwise stellar record. He may be found to have fulfilled his probation requirement earlier, upon successful completion of his community service and full $30,600 restitution to DFAS. He completed 25 days of the court-ordered 100 days of community service. He located an alternate community service organization through which he intended to fulfill his remaining obligation. He made 23 payments to DFAS at $50 to $100 monthly until May 2017, in accordance with a repayment schedule he reached with DFAS prior to the commencement of the state criminal proceedings. DFAS documentation from July 2017 reflected that the account status for his out-of-service debt carried a zero balance. The ABMCR, after its June 2017 final determination in which it granted full relief to Applicant and waived its opportunity to recoup any money from him, refunded him $3,246 in money garnished from his prior military pay and payments he previously made directly to DFAS after he left service in April 2014.

Applicant did not provide evidence to show that the ABMCR's determination supplanted the sentence by state A's superior court. He also did not provide evidence to show that the state superior court accepted the DFAS zero balance as satisfaction of its order. However, he filed with his August 2017 motion to withdraw his guilty plea, the ABMCR's determination that he did not deceitfully intend to defraud the U.S. Government. He also intended to provide the superior court with the exculpatory information contained in the prosecution transcripts for the master sergeant and the DFAS documentation reflecting a zero balance. Applicant's actions demonstrate his efforts at continuing to comply with the superior court's order. AG ¶ 32(d) applies.

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to

> protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

> (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.

Applicant was ordered by the superior court of state A to repay the U.S. Government $30,600 in restitution as part of his guilty plea to misdemeanor larceny. Though he argued that he did not intentionally engage in deceptive financial practices, he understood that he took responsibility for the charge by pleading guilty to it. AG ¶ 19(d) applies.

AG ¶¶ 19(a), 19(b), and 19(c) do not apply. Applicant has had the financial ability to comply with the court's order that he repay the U.S. Government $30,600 in restitution, as he has worked for a defense contractor in some capacity since at least April 2011. He reached a repayment schedule with and began paying DFAS prior to the commencement of the state criminal proceedings. He complied with the repayment schedule and made 23 payments to DFAS at $50 to $100 monthly until May 2017. DFAS documentation from July 2017 reflected that his account status for his out-of-service debt carried a zero balance. The ABMCR, after its June 2017 final determination in which it granted full relief to Applicant, refunded him $3,246 in money garnished from his prior military pay and payments he previously made directly to DFAS after he left service in April 2014.

Applicant did not provide evidence to show that the ABMCR's determination supplanted the sentence by state A's superior court, or that the state superior court accepted the DFAS zero balance as satisfaction of its order. However, he filed with his August 2017 motion to withdraw his guilty plea, the ABMCR's determination that he did not deceitfully intend to defraud the U.S. Government. He also intended to provide the superior court with the exculpatory information contained in the prosecution transcripts for the master sergeant and the DFAS documentation reflecting a zero balance. Applicant's actions demonstrate his efforts at continuing to comply with the superior court's order to repay the U.S. Government its full restitution.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

> (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
>
> (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
>
> (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
>
> (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.

Though Applicant argued that he unknowingly received the funds because he relied on the master sergeant's guidance, and that his charges stemmed from the erroneous conclusion that he was a recruiter, he acknowledged that he took responsibility by pleading guilty to the misdemeanor larceny charge. As such, AG ¶ 20(b) does not apply.

For the same reasons discussed above under my Guideline J analysis, I conclude that AG ¶¶ 20(a), 20(d), and 20(e) apply.

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(d):

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline J and Guideline F in my whole-person analysis.

I have considered Applicant's record in its totality, to include his stellar performance in the U.S. military and his overseas deployment, prior to his 2014 misdemeanor criminal conviction. I have considered his commendable performance for a U.S. defense contractor since then. Applicant credibly testified at hearing that he has taken responsibility for his conviction, and there is sufficient evidence to show that he is committed to complying with the court's order.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the criminal conduct and 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 J:	FOR APPLICANT
Subparagraph 1.a:	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 clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

_____
Candace Le'i Garcia
Administrative Judge