DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
	)	ISCR Case No. 12-02697
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2018

Decision

CERVI, Gregg A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 29, 2016, requesting a Department of Defense (DOD) security clearance. On January 27, 2017, the DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). Applicant responded to the SOR on February 10, 2017, and requested a hearing before an administrative judge.[1]

[1] The DOD CAF acted 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) implemented by the DOD on September 1, 2006. These guidelines were revised on June 8, 2017, and are applicable to all decisions issued thereafter.

The case was assigned to me on June 28, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 28, 2017, scheduling the hearing for July 12, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 10 were admitted in evidence without objection. Applicant testified and, in post-hearing submissions, several documents labeled as Applicant's Exhibit (AE) A were admitted without objection. The Government submitted GE 11 in a post-hearing submission, without objection.

Findings of Fact

Applicant is a 36-year-old military training specialist for a defense contractor. He received a bachelor's degree in 2013 and a master's degree in 2015. He has completed several combat-related military training courses during his honorable service in the U.S. Air Force from 2000 to 2006 as a joint special operations airman that supports Army combat units, and as a civilian defense contractor in 2006 and 2009. He twice deployed to Iraq while on active duty, and nine times to Iraq, Afghanistan and other countries as a civilian. His awards include the Army Commendation Medal, the Air Force Expeditionary Service Medal (with gold border), the Global War on Terrorism Expeditionary Medal, the Combat Readiness Medal, and the Air Force Outstanding Unit Award with valor (two devices). He is a 90% disabled veteran who suffers from post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) as a result of combat activity. He has been married since 2012, and was previously twice married and divorced. He has six children. Three of his youngest children live with him. Applicant has held a security clearance since he was on active duty.

The SOR alleges five delinquent debts totaling about $27,000, the majority from two repossessed vehicles. In addition, the SOR alleges under Guideline E, that Applicant falsified his 2016 SCA by not reporting financial delinquencies, that he provided false and contradictory information during security clearance investigative interviews concerning the circumstances of a 1996 arrest, and by not reporting a juvenile felony arrest in his 2011 and 2016 SCAs. Applicant admitted to a small debt on the SOR, but denied the remaining allegations, with explanations.

SOR ¶¶ 1.a and 1.b allege two vehicle repossessions resulting in charged-off debts totaling about $26,000. One debt was for a loan on a vehicle that belonged to Applicant's ex-wife, who abandoned it and did not make loan payments while he was deployed overseas. The vehicle was repossessed in 2007. Applicant consulted an attorney, who advised him to discontinue payments on the loan since the car was repossessed. The lender issued an IRS form 1099-C, canceling the debt, and the amount was included in Applicant's tax return. The second debt was for a motorcycle that was repossessed in 2009. After deploying overseas as a civilian, Applicant was unable to continue payments on the loan because of reduced income. He voluntarily relinquished the motorcycle to the lender, who issued an IRS form 1099-C, canceling the debt. Both of these aged debts no longer appear on Applicant's credit report.

SOR ¶ 1.c is a small delinquent debt for phone service. Although Applicant canceled the service when he deployed, and disputed the charge, he paid the debt to ensure it was finally resolved. SOR ¶¶ 1.d and 1.e result from a disputed apartment rental. Applicant moved from one apartment to another within the same complex, and departed the first apartment as instructed by the management company. The company later claimed he owed a small amount, which Applicant disputed as unjust. The debt was referred to a collection agent. Applicant's attorney challenged the debt and the company stopped collection action. His attorney provided a letter regarding the apartment dispute. Applicant's current credit report shows the debt was disputed and the account was closed.

Applicant did not report these debts on his SCA because he believed they were not reportable because they were outside the reporting period, settled, or disputed as invalid. He acknowledged his error in not fully reading and understanding the SCA questions, and stated that he did not intentionally falsify his security clearance application. Likewise, when he was interviewed by investigators during security clearance processing, he noted that he had prior criminal involvement while a juvenile, and attempted to explain the circumstances to the investigator. He noted that he was never charged or convicted of a felony, and that the investigator confused the circumstances of his criminal involvement while in high school. Applicant denied any felony arrest, and believed that a 1996 juvenile misdemeanor arrest was not reportable on his SCAs because it was sealed and removed from his record as a juvenile. He noted he did not intentionally or unintentionally mislead the investigator. He stated that the investigator did not confront him before he had a chance to discuss the incident, but that his explanation of the arrest was confused by him and the investigator. In the 2016 interview, Applicant said the investigator raised an issue regarding a switchblade or knuckles, and he assumed she was referring to the misdemeanor arrest for possession of a firearm without a license. Applicant asserted that he would never try to deny his debts or criminal charge to the government, and that he has always been open and honest.

Applicant provided significant evidence of professional training, letters of recommendation, and his certificate of release or discharge from active duty. His colleagues and former supervisor strongly support him and extol his honesty, loyalty, and work ethic.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines are applicable to this decision.

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(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 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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; and

(c) a history of not meeting financial obligations.

Applicant has had financial problems and incurred delinquent debts that have since been resolved. The evidence is sufficient to raise the above disqualifying conditions.

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;
>
> (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
>
> (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
>
> (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.

Applicant attributed his financial problems to a period of insufficient income and marital problems while he was deployed overseas. These situations undoubtedly contributed to his financial delinquencies. He addressed them, and I believe he now has his finances under control.

The majority of Appellant's financial delinquencies involve two dated repossessions. These have been canceled through issuance of IRS form 1099-Cs, and are resolved. Over time, Applicant addressed his debts, and they were resolved, paid or legitimately disputed. He sought advice from an attorney where necessary. His current credit report no longer reports the repossessions, and reports the small delinquencies as resolved. He is current on his mortgage and has had no additional delinquencies.

Applicant responsibly addressed his debts and made good-faith efforts to resolve those that he could. His financial delinquencies are dated, he sought assistance from an attorney when necessary, and he has shown financial responsibility since he was remarried. Applicant's past financial issues no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), (d), and (e) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

> Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

> (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and
>
> (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

When falsification allegations are controverted, as in this case, the Government has the burden of proving the allegations. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.[2] An applicant's level of education and business experience are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate.[3]

Appellant did not report delinquent financial accounts in his 2016 SCA because he believed the apartment delinquency that was reportable was resolved. In addition, he admitted that he did not take the time to fully read and understand the SCA questions, but that he did not intentionally falsify his SCAs. With regard to his 1996 juvenile arrest,

[2] *See* ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

[3] ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

there is insufficient evidence of intentional falsification or misleading statements with regard to the event. He does not believe he was arrested or convicted of a felony while he was a juvenile, and that he was not clear in his explanation of the events during his interviews.

I am not convinced that Applicant intentionally falsified his SCAs or intentionally refused to provide truthful answers during his interviews. He provided plausible explanations for his omissions on his SCA and interview summary. The SOR allegations of intentional falsification are not supported by the evidence. AG ¶ 16(a) and (b) are not applicable. The personal conduct security concerns are concluded for Appellant.

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. I have incorporated my comments under Guidelines F and E in my whole-person analysis.

I considered Applicant's testimony, his honorable military service in combat, and documents provided after the hearing. Applicant has shown current financial responsibility and appears to have control of his finances with his current spouse. I am convinced that he did not knowingly fail to provide truthful answers on his SCAs or interviews, and that he now understands the requirement for more precision in answering questions in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated the financial considerations and the personal conduct security concerns are resolved in his favor.

Formal Findings

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

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a - e:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a - b:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge