



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06206

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

03/15/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On April 3, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On May 11, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

¹ Item 3 (e-QIP, dated April 3, 2014).

September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. On May 28, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.² A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on January 8, 2016, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on January 15, 2016. A response was due by February 14, 2016. Applicant submitted a one-page response to the FORM on January 19, 2016. The case was assigned to me on March 7, 2016.

Findings of Fact

In his Answer to the SOR, while not specifically using the terms "admit" or "deny," Applicant essentially admitted both of the factual allegations pertaining to financial considerations (§§ 1.a. and 1.b.). Applicant's extensive comments and admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 54-year-old employee of a defense contractor. He has been an electronics technician with his current employer since August 2013. With the exception of periods of unemployment, he was previously a field engineer, field service engineer, telecommunications technician, or recruiter with other employers from June 2004 until April 2012. He was unemployed from January 2007 until September 2007; March 2008 until April 2008; November 2008 until December 2008; and from April 2012 until September 2012.³ He is a 1980 high school graduate with a 2006 bachelor's degree in an unspecified discipline and anticipates obtaining a master's degree in business administration (MBA).⁴ Applicant enlisted in the U.S. Air Force in July 1989, and he was honorably discharged in November 1996.⁵ He has held a top secret security clearance

² Item 2 (Applicant's Answer to the SOR, dated May 28, 2015).

³ Item 3, *supra* note 1, at 13-21; Item 4 (Personal Subject Interview, dated May 6, 2014), at 4-5; Item 4 (Subject Contact, dated July 8, 2014). It should be noted that Applicant's self-reported periods of unemployment are inconsistent, and his dates have apparently been revised over time.

⁴ Item 4, *supra* note 3, at 4; Item 3, *supra* note 1, at 12; Item 2, *supra* note 2, at 1.

⁵ Item 3, *supra* note 1, at 22-23. Applicant did not submit a copy of his Certificate of Release or Discharge from Active Duty (DD Form 214) which would reflect any awards and decorations that he might have received during his period of military service.

since 1995.⁶ He was married to his first wife (a Russian-born naturalized U.S. citizen) in 1996 and divorced in 2000. He married his second wife (a Japanese citizen) in 2000 and divorced in 2004.⁷ He has one son born in 2001.⁸

Financial Considerations⁹

It is unclear when Applicant first experienced financial difficulties, but in reviewing his credit reports from April 2014 and April 2015, as well as his comments to an investigator from the U.S. Office of Personnel Management (OPM), it appears that several delinquent accounts existed as far back as 2007, with additional ones entering that status over the ensuing years. Applicant had delinquent credit card accounts automobile loans, student loans, cellular telephone accounts, a home mortgage account, and delinquent income taxes. Despite those earlier delinquencies, Applicant contends that his real financial problems arose in April 2012.

Applicant explained that in August 2010 he was hired to work in Afghanistan. No income tax was withheld from his earnings and he planned on paying all of his income taxes when he returned from Afghanistan. He sustained a knee injury in April 2012 and was placed on unpaid medical leave until he was terminated in October 2012. He had been given the option of returning to work in Afghanistan or simply quitting. Applicant chose to quit. As a result, he claims he was unemployed during the period of federal sequestration and furloughs. However, the budget sequestration in 2013 refers to the automatic spending cuts to U.S. federal government spending in particular categories of outlays that were initially set to begin on January 1, 2013, as an austerity fiscal policy as a result of Budget Control Act of 2011. They were postponed for two months by the American Taxpayer Relief Act of 2012. On March 1, 2013, sequestration went into effect – four months after Applicant decided to quit his job.

Although he was unemployed for the next 14 months, Applicant was ineligible for unemployment compensation benefits because he had previously qualified for the state tax exemption. Under that policy, as explained by Applicant without citing any legal authority, persons outside of the state for 546 consecutive days are exempt from paying state income tax. The negative side of the policy is that since Applicant had not paid into the system, he was ineligible for the benefits. With no unemployment compensation and no other income, Applicant used his savings to survive. Some accounts became delinquent and income taxes remained unpaid.

⁶ Item 4, *supra* note 3, at 7; Item 3, *supra* note 1, at 38-39; Unnumbered Item (Joint Adjudication Management System (JAMS) Person Summary, dated January 8, 2016).

⁷ Item 4, *supra* note 3, at 6; Item 3, *supra* note 1, at 25.

⁸ Item 3, *supra* note 1, at 29.

⁹ General source information pertaining to the financial issues discussed below can be found in the following exhibits: Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 17, 2014); Item 5 (Equifax Credit Report, dated April 21, 2015); Item 4, *supra* note 3; Item 3, *supra* note 1, at 40. More recent information can be found in the exhibits furnished and individually identified.

When Applicant obtained new employment in August 2013, he was hired at a lower rate earning approximately 40 percent less than his earlier stateside salary of nearly \$100,000. While holding his full-time job, Applicant also went back to school as a full-time MBA student. He sought permission to work in a second job at the same time, but was not encouraged to do so. When he responded to the SOR, Applicant noted that “at this time” he only had limited means to satisfy his tax debts. He added that once he received his MBA, he would seek “greener pastures” for a higher salary to pay off his debts. Applicant stated that he was getting his bills paid and investing two percent of his salary into his 401(k) retirement account.

The SOR identified two purportedly continuing delinquent accounts with the Internal Revenue Department (IRS), totaling approximately \$34,833. Although Applicant offered comments regarding each of the accounts, he failed to submit any documentation to support his contentions pertaining to his actions or activities to resolve them. Those debts and their respective current status, according to the above-cited credit reports, Applicant’s comments to the OPM investigator, in the e-QIP, in his Answer to the SOR, and in Response to the FORM, are described as follows:

SOR ¶ 1.a. – Applicant owes the IRS \$34,000 in unpaid federal income taxes for the tax years 2010, 2011, and 2012. He contended he paid his federal income taxes for 2013 and 2014 and that his refunds, including one for \$1,300 on the 2013 tax return, were attached by the IRS and applied to the outstanding balances from the prior years. He failed to submit any documentation reflecting that purported action. Applicant recently stated that he had entered into an installment agreement with the IRS under which he is to make monthly payments of \$125 until the overall debt is resolved.¹⁰ Once again, he failed to submit any documentation to support his statement. He failed to furnish a copy of the installment plan or any monthly receipts, payment coupons, cancelled checks, or other evidence of either the plan or payments under it. There is no documentary evidence to support a finding that the accounts are in the process of being resolved.

SOR ¶¶ 1.b. – Applicant owes the U.S. Department of the Treasury a past-due balance of \$833 on an unspecified account that was over 180 days past due with the first delinquency occurring in March 2012. Applicant claimed to have no knowledge of the account, stating the debt “has not been explained” to him.¹¹ There is no evidence of any effort by Applicant to resolve the account.

In addition to the absence of documentation related to the two delinquent accounts described above, Applicant failed to furnish a personal financial statement setting forth his net monthly income; his monthly household expenses; and his monthly debt payments. In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. Thus, it is nearly impossible to determine if Applicant’s finances are under control or if he is still experiencing financial

¹⁰ Applicant’s Response to the FORM, dated January 19, 2016.

¹¹ Item 2, *supra* note 2, at 2.

difficulties. There is no evidence that Applicant ever sought the services of a financial advisor, or that Applicant ever received financial counseling. There is a paucity of evidence to indicate that his financial problems are now under control.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”¹² 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹³

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”¹⁴ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.¹⁵

¹² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹⁴ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

¹⁵ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”¹⁶

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”¹⁷ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has had a long-standing problem with his finances which started as early as 2007, but which became a substantial income tax problem in 2012.

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ See Exec. Or. 10865 § 7.

He had previously chosen not to have income tax withheld from his earnings. He explained his purported plans for his federal income taxes, but during 2012, while he was home nursing his injured knee, he took no steps to pay those income taxes for 2010, 2011, or 2012. He owes the IRS \$34,000, and he has ignored the other debt for \$833. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹⁸

AG ¶¶ 20(a), 20(c), and 20(d) do not apply. AG ¶ 20(b) minimally applies. The nature, frequency, and recency of Applicant’s continuing income tax difficulties since the tax year 2010 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant attributed his failure to pay his income taxes to his overseas status which was followed by his period of unemployment and subsequently by his reduced salary. His description of why, and under what authority, he failed to routinely pay his federal income taxes for those three tax years is superficial at best. He cited no legal authority for his non-payment of taxes during 2010 or 2011. Applicant attributes his unemployment status and the federal sequestration and furloughs for his inability to generate better employment and a larger salary. However, he, himself, made the decision to become unemployed when he quit his job in October 2012, four months before the commencement of the period of federal sequestration and furloughs. Applicant failed to demonstrate what actions he had taken to address his delinquent income taxes other than to claim that he has an installment plan with the IRS and that

¹⁸ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

he did not have sufficient funds to pay his federal income taxes. He offered no documentary evidence of a good-faith effort to resolve his two delinquent accounts.

There is no evidence to indicate that Applicant ever received financial counseling. In the absence of a personal financial statement, or any current information pertaining to his monthly income, expenses, and available funds for discretionary savings or spending, it is impossible to determine the current state of his financial affairs. Because of his failure to furnish documentation regarding his 2010, 2011, 2012 federal income taxes, or the other debt, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control. Applicant has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors.¹⁹ Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment.²⁰

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 the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²¹

¹⁹ "Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

²⁰ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

²¹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's conduct. He has been an electronics technician with his current employer since August 2013. He previously served in Afghanistan with another employer from August 2010 until he injured his knee, and he subsequently quit his job in October 2012. He was honorably discharged from the U.S. Air Force. He has held a top secret security clearance since 1995.

The disqualifying evidence is more substantial. Applicant has repeatedly declared his intentions of paying his income taxes for the 2010, 2011, and 2012 tax years, but acknowledged that given his current salary, he would be unable to do so for quite some time. He contends that his income tax refunds from his filings for 2013 and 2014 were applied to his delinquent taxes. He failed to submit any documentation to support his contentions that there is an installment agreement with the IRS, that he has made any payments to the IRS, or that his refunds were applied to his delinquent taxes. Applicant offered no evidence as to his reputation for reliability, trustworthiness, and good judgment. Likewise, there is no evidence to indicate that Applicant ever received financial counseling.

In the absence of any current information pertaining to his monthly income, expenses, and available funds for discretionary savings or spending, it is impossible to determine the current state of his financial affairs. Applicant's long-standing failure over the years to voluntarily repay the IRS, even in the smallest amounts, or to arrange even the most reasonable installment plan, reflects traits which raise concerns about his fitness to hold a security clearance. There are clear indications that Applicant's financial problems are not under control. Applicant's actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. Considering the absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:²²

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts

²² ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an essentially negative track record of voluntary debt reduction and elimination efforts, generally ignoring his income tax debts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge