



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



In the matter of:)
)
 ---) ISCR Case No. 16-02978
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

01/24/2019

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On May 15, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 23, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order (Exec. Or.) 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) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.¹

The SOR alleged security concerns under Guidelines E (Personal Conduct), J (Criminal Conduct), and 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 such eligibility should be granted, continued, denied, or revoked.

Applicant received the SOR on January 10, 2017. In a sworn statement, dated January 30, 2017,² Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 8, 2017. The case was assigned to me on March 20, 2018. A Notice of Hearing was issued on August 28, 2018, scheduling the hearing for September 24, 2018. I convened the hearing as scheduled.

During the hearing, Government exhibits (GE) 1 through GE 7 and Administrative Exhibit I were admitted into evidence without objection. No Applicant exhibits (AE) were offered. Applicant testified. The transcript (Tr.) was received on January 17, 2019.³ I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted several documents, which were marked and admitted as AE A through AE O, without objection. The record closed on October 29, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with limited comments, nearly all of the factual allegations pertaining to personal conduct in the SOR (SOR ¶¶ 1.a. through 1.d., and 1.f.); he failed to admit or deny one allegation pertaining to personal conduct (SOR ¶ 1.e.), so a denial was registered for him; he admitted, with limited comments, nearly all of the factual allegations pertaining to criminal conduct (SOR ¶¶ 2.a. through 2.c.); he failed to admit or deny one allegation pertaining to criminal conduct (SOR ¶ 2.d.), so a denial was registered for him; and he admitted several allegations pertaining to financial considerations (SOR ¶¶ 3.i. through 3.n.). He denied, with limited comments, all of the remaining allegations.

During the hearing, Department Counsel moved to amend the SOR by adding eight additional factual allegations pertaining to financial considerations (SOR ¶¶ 3.o.

¹ Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

² Although the pre-printed form upon which Applicant selected the chosen forum was dated 2016, it is clear that if the SOR was issued in December 2016, he could not have received it in January 2016.

³ Although a copy of the purported transcript was received on October 2, 2018, while the cover of the transcript was the one for this case, the contents were associated with a different case. Upon determining the error, the correct transcript was electronically transmitted to me on January 17, 2019.

through 3.v.). There being no objection, the motion was granted.⁴ Applicant was afforded 20 days to respond to the new allegations. He failed to admit or deny any of the added allegations pertaining to financial considerations, so denials were registered for him.

Applicant's admissions and comments 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 38-year-old employee of a defense contractor. He has been serving as a missile assembler with his current employer since October 2004. Although he attended high school for six years, in 2000, he received a certificate of completion, but not a diploma. He has never served in the U.S. military. He was granted a secret clearance in 2004. Applicant has never married, but he has resided with a cohabitant for an unspecified period, and he had four children, born in 2002, 2004, 2008, and 2015, respectively.

Personal Conduct and Criminal Conduct

Applicant has a lengthy history of disregarding laws, rules, and regulations. The SOR alleged nine incidents of criminality and personal conduct by Applicant commencing in 2006, and continuing until at least 2016.

(SOR ¶¶ 1.a. and 3.n.): In June 2006, Applicant was charged with 1) Driving with Suspended License, 2) Operating a Vehicle without Insurance, and 3) Switched Tag. He was convicted and fined.⁵ He was granted a payment plan. While he paid \$35 associated with the Switched Tag conviction, he failed to pay the remaining \$256 for that charge, and the \$306 and \$356 for the other charges.⁶

(SOR ¶¶ 1.b. and 3.n.): In July 2012, Applicant was charged with 1) Driving while License Suspended, and 2) Operating a Vehicle without Insurance. He was convicted and fined.⁷ He was granted a payment plan. While he paid \$356 for the Insurance charge, and \$244 associated with the Suspended License conviction, he failed to pay the remaining \$62 for that charge.⁸

(SOR ¶¶ 1.c. and 3.n.): In July 2013, Applicant was charged with 1) Driving with License Revoked, 2) Operating a Vehicle without Insurance, and 3) Expired Tag. He was

⁴ Tr. at 12-14.

⁵ GE 6 (Municipal Record Search, dated October 21, 2016).

⁶ Applicant's Answer to the SOR, *supra* note 1.

⁷ GE 6, *supra* note 5.

⁸ GE 6, *supra* note 5.

convicted and fined.⁹ He was granted a payment plan. His fines of \$306 for the Revoked License, \$356 for the Insurance, and \$206 for the Expired Tag remain unpaid.¹⁰

(SOR ¶¶ 2.a. and 3.n.): In October 2013, Applicant was charged with Contempt of Court associated with his failures to pay his outstanding fines. In March 2014, after he paid \$35 in fees and court costs, the charge was *nolle prossed*.¹¹

(SOR ¶¶ 1.d., 1.f., and 3.n.): In January 2014, Applicant was arrested and charged with 1) Driving with License Revoked, 2) Failure/Refusal to Display Insurance, and Expired Tag. He was convicted and fined.¹² He was granted a payment plan. His \$306 fine for Revoked License, \$356 fine for Insurance, and his \$206 fine for Expired Tag remain unpaid.¹³ Applicant failed to self-report his arrest to his security manager of facility security office.¹⁴

(SOR ¶¶ 2.b. and 3.n.): In September 2014, Applicant was again charged with Contempt of Court associated with his failures to pay his outstanding fines. In November 2014, a warrant was issued for his arrest. He was eventually ordered to pay \$303 in fees and court costs, but that amount remains unpaid.¹⁵

(SOR ¶ 1.g.): In December 2015, a coworker brought a shocking pen into the work area. Applicant took the device from the coworker and entered another work area where he attempted to “prank” another employee. Human Resources determined that Applicant had conspired to be untruthful in an interview when he was questioned about his level of involvement in the incident. Applicant was subsequently issued a written warning for failure to comply with the company’s guidelines for professional conduct.¹⁶ Applicant denied both the allegation and taking the device into the work area, claiming the incident was incorrectly reported.¹⁷

(SOR ¶ 2.c.): Although he is aware that it is illegal to operate a motor vehicle without a driver’s license, when he is unable to obtain transportation to and from work

⁹ GE 6, *supra* note 5.

¹⁰ GE 6, *supra* note 5.

¹¹ GE 6, *supra* note 5.

¹² GE 6, *supra* note 5.

¹³ GE 6, *supra* note 5.

¹⁴ Applicant’s Answer to the SOR, *supra* note 1.

¹⁵ GE 6, *supra* note 5.

¹⁶ GE 5 (Incident History, dated September 29, 2016).

¹⁷ Applicant’s Answer to the SOR, *supra* note 1; Tr. at 74-76.

with a coworker, to avoid being fired from his job, Applicant admitted that he takes the risk and has continued to drive unlawfully since his 2014 arrest.¹⁸

Financial Considerations¹⁹

Applicant attributed his financial difficulties to several factors: he is a single father; he and his children reside with Applicant's grandmother – the individual who raised him – in her house; his girlfriend refused to allow him to get a tag for the vehicle in her name for which he had cosigned; and in 2012, his girlfriend left him and the children. Although not cited by him as a contributing factor to his financial problems, three or four years ago, for Christmas, Applicant purchased an unspecified number of all-terrain-vehicles (ATVs) for his children, each costing \$5,000 to \$6,000.²⁰ For reasons not explained other than experiencing "rough times," in addition to the traffic fines and fees that remain unpaid, other accounts became delinquent.

The SOR, as amended, identified 21 purportedly delinquent accounts, including unpaid court fines and fees, which had been placed for collection, charged off, or filed as judgments, as generally reflected by Applicant's December 2010, June 2016, or September 2018 credit reports. Those debts total approximately \$48,677. The current status of the non-court fines and fees accounts is as follows:

There are six delinquent accounts that were placed for collection and filed as judgments that were eventually partially or fully satisfied by garnishments: \$5,028 (SOR ¶¶ 3.c. and 3.l.); \$1,048 (SOR ¶ 3.d.); \$1,400 (SOR ¶¶ 3.e. and 3.m.); \$1,025 (SOR ¶ 3.f.); \$5,064 (SOR ¶¶ 3.g. and 3.i.); and \$1,149 (SOR ¶ 3.h.).²¹ There has been no change in the status of a vast majority of Applicant's accounts that were placed for collection, most of which were charged off with unpaid balances: \$4,787 (SOR ¶ 3.a.); \$374 (SOR ¶ 3.b.); \$2,167 (SOR ¶ 3.o.); \$1,385 (SOR ¶ 3.p.); \$2,088 (SOR ¶ 3.q.); \$9,073 (SOR ¶ 3.r.); \$6,154 (SOR ¶ 3.s.); \$418 (SOR ¶ 3.t.); \$175 (SOR ¶ 3.u.); and \$714 (SOR ¶ 3.v.).²²

¹⁸ GE 2 (Personal Subject Interview, dated May 18, 2016), at 3; Applicant's Answer to the SOR, *supra* note 1; Tr. at 72.

¹⁹ General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 2, *supra* note 18; GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 30, 2010); GE 4 (Equifax Credit Report, dated June 28, 2016); GE 7 (Equifax Credit Report, dated September 21, 2018); and Applicant's Answer to the SOR, *supra* note 1.

²⁰ Tr. at 56-57.

²¹ GE 3, *supra* note 19; GE 4, *supra* note 19; GE 7, *supra* note 19; AE A (Garnishment File, various dates); AE B (Satisfaction of Judgment, dated October 16, 2018); AE C (Garnishment File, various dates); AE D Civil Fee Sheet, dated September 28, 2018); AE E (Garnishment File, various dates); AE F (Order, dated May 27, 2010); AE G (Order, dated June 9, 2009); AE H (Garnishment File, various dates); AE I (Civil Fee Sheet, dated September 28, 2018); AE J (Garnishment File, various dates). See *also* GE 5, *supra* note 15.

²² GE 7, *supra* note 19; Tr. at 55.

Applicant claimed he made some payments to creditors, and he contended that in March 2018 he engaged the professional services of a debt relief organization to resolve his delinquent accounts, and that he pays that organization \$400 per month for their services.²³ Although Applicant stated an intention to submit documentation regarding his relationship with the debt relief company; the status of all of his delinquent accounts; payment plans established with his creditors; and payments made to creditors by himself or in his behalf, no such documentation was submitted.

Applicant submitted a Personal Financial Statement to reflect his monthly net income; monthly expenses; and a monthly remainder available for discretionary saving or spending. He reported that his monthly net salary was about \$2,731.80, and his monthly expenses, including \$500 child support, and \$600 for debt relief and credit cards, was \$2,450.²⁴ That leaves him approximately \$282 per month available for discretionary saving or spending. There is no evidence of financial counseling.

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.”²⁵ 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.”²⁶

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines 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,

²³ Tr. at 48-52.

²⁴ AE N (Personal Financial Statement, undated).

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”²⁷ 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.²⁸

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.”²⁹

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.”³⁰ 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.

²⁷ “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).

²⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁹ *Egan*, 484 U.S. at 531.

³⁰ See Exec. Or. 10865 § 7.

Analysis

Upon consideration of all the facts in evidence, including those in the DOD CAF case file, those submitted by Applicant, his testimony, as well as an assessment of Applicant's demeanor and credibility, and after application of all appropriate legal precepts and factors, I conclude the following with respect to the allegations set forth in the SOR:

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30: 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.

The guideline notes conditions under AG ¶ 31 that could raise security concerns:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (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.

Between 2006 and 2014, Applicant established a lengthy pattern of criminality involving repeated traffic-related violations for which he was charged, convicted, and fined. His repeated failures to pay his court fines and costs resulted in two charges of contempt of court. Although he is aware that it is illegal to operate a motor vehicle without a driver's license, Applicant admitted that he takes the risk and has continued to drive unlawfully since his 2014 arrest. Based on the actions described above, AG ¶¶ 31(a) and 31(b) have been established.

The guideline also includes examples of conditions under AG ¶ 32 that could mitigate trustworthiness concerns arising from criminal conduct. They include:

- (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 to support 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.

None of the mitigating conditions apply. Applicant's continuing unwillingness to comply with laws, rules, and regulations is troubling, for he routinely ignores the law when he consistently drives a vehicle without a license, when it has been suspended or revoked, without insurance, or with an expired or switched tag. Under these circumstances, there is little, if any, evidence of rehabilitation. While a person should not be held forever accountable for misconduct from the past, in this instance, the criminal conduct is routinely continuing. Given his cavalier attitude towards laws, rules, and regulations, Applicant's history of criminal conduct, under the circumstances, continues to cast doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline also includes an example of a condition that could raise security concerns under 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, unreliability, lack

of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

My discussion related to Applicant's criminal conduct is adopted herein. In addition, Applicant failed to self-report his 2014 arrest to his security manager or his facility security office. Applicant's continuing unwillingness to comply with laws, rules, and regulations is troubling. With respect to the incidents of criminal-personal conduct discussed above, and Applicant's failure to report his 2014 arrest, AG ¶ 16(c) has been established. As to the alleged conduct, denied by Applicant, regarding his failure to comply with the corporate guidelines for professional conduct in December 2015, while further commentary appears below, AG ¶ 16(c) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

(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; and

(e) The information was unsubstantiated or from a source of questionable reliability.

Because of Applicant's continuing unwillingness to comply with laws, rules, and regulations, especially related to the unlawful driving issues, as well as his failures to pay the court-assessed fines and costs, AG ¶ 17(c) does not apply. While Applicant failed to self-report his 2014 arrest, he claimed that he was unaware that the incident was supposed to be reported. There is no evidence that Applicant had been informed of his responsibility to report it.

With respect to the alleged incident of Applicant's failure to comply with the corporate guidelines for professional conduct, guidelines which were not entered into evidence, in December 2015, as noted above, Applicant denied the allegation and the facts underlying it. The only evidence of the alleged incident or the facts reported, are found in a Joint Personnel Adjudication System (JPAS) Person Summary, called an Incident History, written by an unidentified individual, with no indicia of accuracy or verification. It does not appear to be an investigative report, and is unverified hearsay. Given Applicant's denial of the allegation in its entirety, acceptable evidence of the alleged incident, at least in the form of an official corporate incident report, report of inquiry, or some other verified document signed by a corporate executive or government official should have been submitted. In the absence of such evidence, as to this allegation, AG ¶ 17(e) applies. Nevertheless, Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Guideline F, Financial Considerations

The security concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (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
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

The SOR, as amended, identified 21 delinquent accounts, including unpaid court fines and fees, that had been placed for collection, charged off, or filed as judgments, totaling approximately \$48,677. There is no evidence that he was unwilling to satisfy his debts or that he had the ability to do so, but with the purchase of one or more ATVs for his children, each costing \$5,000 to \$6,000, there is evidence of frivolous or irresponsible spending, or consistent spending beyond his means, especially when he had numerous delinquent accounts and unpaid court fines and fees. There has been no change in the status of a vast majority of Applicant's delinquent accounts. AG ¶¶ 19(a), 19(c), and 19(e) have been established, but AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under 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;³¹

(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;³² 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.

None of the mitigation conditions apply. The conditions that supposedly resulted in Applicant's financial problems were of his own making, not the result of conditions that were largely beyond his control. The somewhat rare instances of his paying court fines and fees do not constitute a "good-faith" effort to resolve his debts, and neither does the resolution of judgments by garnishment. Applicant claimed he hired a debt relief organization to resolve his debts. But, as noted above, he failed to submit documentation

³¹ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

³² 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)).

to support his claims. Although the record remained open, he also failed to furnish a requested updated status of his SOR-related accounts supported by receipts, checks, or letters related to those debts; and a copy of his repayment plan showing any priority for addressing his delinquent accounts.

Applicant offered no documentation to indicate that he sought information from his creditors or collection agents,³³ or by obtaining financial counseling and credit resolution guidance and assistance. He offered evidence to indicate that his annual income is sufficient to address at least some of his delinquent accounts, but little evidence to indicate that his financial situation is now under control. Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.³⁴

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant's promises have not transitioned into positive action.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of public trust 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 SEAD 4, App. A, ¶ 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;

³³ "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.

³⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant 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.³⁵

There is some evidence in favor of mitigating Applicant's conduct. Applicant is a 38-year-old employee of a defense contractor. He has been serving as a missile assembler with his current employer since October 2004. He was granted a secret clearance in 2004.

The disqualifying evidence under the whole-person concept is more substantial. Applicant is an individual with a history of criminal conduct and personal conduct incidents taking place starting in 2006 and continuing through 2014. In fact, although he has not been caught by the police authorities since 2014, Applicant continues to show an unwillingness to comply with laws, rules, and regulations, for he routinely ignores the law when he consistently drives a vehicle without a license, when it has been suspended or revoked, without insurance, or with an expired or switched tag. Although he has been convicted of numerous traffic-related violations and fined and assessed court fees, he has generally ignored those fines and fees to the extent that he has twice been charged with contempt of court. Judgments have been satisfied only through garnishments of his wages, not by mutually-agreed repayment plans. Although Applicant claimed to have taken certain positive actions to address his creditors and delinquent accounts, he failed to submit requested documentation to support his various claims and contentions.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³⁶

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

³⁵ 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).

³⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 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 a poor track record of debt reduction and elimination efforts, essentially failing to address nearly all of his SOR-related debts. Overall, the evidence leaves me with 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 criminal conduct, personal conduct, and financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(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 E:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.e.:	Against Applicant
Subparagraphs 1.f. and 1.g.:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.d.:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraphs 3.a. and 3.b.:	Against Applicant
Subparagraphs 3.c. through 3.m.:	For Applicant
Subparagraphs 3.n. through 3.v.:	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