DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
---	)	ISCR Case No. 18-01549
	)	
Applicant for Security Clearance	)	

Appearances

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

05/24/2019

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Decision

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GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

Statement of the Case

On April 25, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On July 6, 2018, 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 Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find 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.

In a sworn statement, dated July 26, 2018, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 24, 2018. The case was assigned to me on January 10, 2019. A Notice of Hearing was issued on March 13, 2019. I convened the hearing as scheduled on April 2, 2019.

During the hearing, Government exhibits (GE) 1 through GE 10, and Applicant exhibits (AE) A through AE G were admitted into evidence without objection. I also marked for identification and included three Hearing Exhibits (HE) I through HE III. Applicant testified. The transcript (Tr.) was received on April 11, 2019. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents which were marked and admitted into evidence as AE H through AE AC without objection. The record closed on May 2, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments four of the factual allegations in the SOR (SOR ¶¶ 1.a., 1.b., 1.e., and 1.f.). 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 54-year-old employee of a defense contractor. He has been serving as a sheet metal mechanic with his current employer since October 2014. A 1983 high school graduate, he earned some college credits, but no degree. Applicant enlisted in the U.S. Navy in May 1984, and he was honorably retired as a petty officer first class (E-6) in May 2004. He was granted a secret clearance in 1986, and it was renewed in 2005. Applicant was married in 1988. He has two daughters, born in 1989 and 1991.

Military Record

During his military career, Applicant was deployed on several occasions to the Eastern Mediterranean Sea and the Persian Gulf. He was awarded the Navy Sea Service Deployment Ribbon (four awards); the Navy Battle "E" Ribbon (four awards); the Navy Good Conduct Medal (five awards); the National Defense Service Medal (two awards); the Enlisted Aviation Warfare Insignia; the Navy and Marine Corps Achievement Medal (two awards); the Navy Expert Pistol Shot Medal; the Southwest Asia Service Medal; the Navy Meritorious Unit Commendation (five awards); and the Armed Force Expeditionary Medal.[1]

[1] AE H (Certificate of Release or Discharge from Active Duty (DD Form 214), dated April 6, 1988); AE I (DD Form 214, dated May 31, 2004).

Financial Considerations[2]

Applicant underwent major back surgery in August 2011, and as a result, his employer did not allow him to work until he was fully recovered. Short-term disability, and eventually long-term disability, payments were substantially less than his normal salary and insufficient for him to maintain all of his accounts in a current status. As a result, some accounts became delinquent. Applicant called his creditors to alert them to his financial situation, and while some cooperated with him, his mortgage lender refused to do so, demanding timely full payments. In an effort to address his growing financial issues, Applicant searched for an attorney, finally engaging the professional services of one particular national law firm (law firm A). His attorneys advised him to stop making any mortgage payments and indicated that the missed payments would be added to the backend of his mortgage. Commencing in December 2011, and continuing for over a year, Applicant paid his attorneys, through a particular law firm serving as a financial service previously known as company X, approximately $500 per month, and following instructions, he did not pay his mortgage lender.[3]

After a year of making payments to law firm A, and obtaining no success regarding any efforts by that law firm, Applicant was referred to another particular law firm (law firm B) located in the same suite as law firm A.[4] He continued making similar monthly payments to the new law firm, again for another year of professional services. Eventually, after an additional period of apparent inaction, law firm B advised him to file for bankruptcy.[5] He paid a bankruptcy attorney $3,200, and in November 2014, Applicant filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code.[6] He listed $178,279 in assets, including $145,000 in real property; and $223,510 in total liabilities, including $163,205 for creditors holding secured claims (two mortgages on his residence and one vehicle loan), and $60,305 for creditors holding unsecured nonpriority claims.[7] Applicant's statement of current monthly income and calculation of commitment period and disposable income reflected $5,652 in monthly income, and an anticipated $5,924 in total

[2] General source information pertaining to the financial issues discussed below can be found in the following exhibits: GE 2 (e-QIP, dated April 25, 2017); GE 4 (Enhanced Subject Interview (ESI), dated January 20, 2017); GE 3 (ESI, dated January 11, 2018); GE 5 (Equifax Credit Report, dated September 9, 2015); GE 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 19, 2016); GE & (Combined Experian, TransUnion, and Equifax Credit Report, dated June 1, 2017); GE 9 (2014 Chapter 13 Bankruptcy Casefile, various dates); GE 10 (2016 Chapter 13 Bankruptcy Casefile, various dates); AE A (Extracts of Experian Credit Report, dated April 1, 2019), dated April 3, 2019); and Applicant's Answer to the SOR, dated June 26, 2018. It should be noted that AE V is a corrupted version of AE A.

[3] GE 4, *supra* note 2, at 2-3; AE Z (Letter, dated April 30, 2019); AE P (Law Firm A Profile, dated April 24, 2019); AE U (E-mail, dated April 24, 2019); AE X (Bank Transactions, various dates); AE Y (Bank Transactions, dated December 31, 2012); Tr. at 45-47.

[4] AE O (Law Firm B Profile, dated April 24, 2019); AE Z, *supra* note 3.

[5] GE 4, *supra* note 2, at 3; AE X, *supra* note 3; AE Y, *supra* note 3; AE Z, *supra* note 3; Tr. at 47.

[6] GE 9 (Voluntary Petition, dated November 17, 2014).

[7] GE 9, *supra* note 2.

deductions, including payments for four accounts, which would have left him $272 short.[8] A revised calculation was submitted, and it reflected $6,079 in monthly income, and an anticipated $5,151 in total deductions, leaving him with $919 in disposable income.[9] On July 2, 2015, the bankruptcy trustee filed a motion to dismiss the Chapter 13 case because Applicant had failed to provide a copy of his federal income tax return for the tax year 2014.[10] Because Applicant had already paid the bankruptcy trustee $5,967, and the bankruptcy trustee had not made any disbursements to creditors, $5,449 was eventually refunded to him, and the remainder was retained for administration expenses. That bankruptcy was dismissed in July 2015.[11]

As a result of the bankruptcy trustee's non-disbursement of payments to Applicant's creditors, in November 2015, the creditor that had financed Applicant's automobile, for which over $7,400 was still owed, repossessed the vehicle and sold it at auction. There was no reported deficiency, and Applicant does not owe the creditor any unpaid balance. During the period August 2015 through January 2016, Applicant made payments to some of his creditors,[12] but by then, accounts had become even more delinquent because of the lengthy period of previous nonpayment associated with the previous legal guidance not to make payments and the non-disbursements by the bankruptcy trustee.

In January 2016, Applicant refiled for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code, and he was assigned the same bankruptcy trustee.[13] He listed $167,608 in assets, including $145,000 in real property; and $223,510 in total liabilities, including $155,695 for creditors holding secured claims (two mortgages on his residence), and $67,815 for creditors holding unsecured nonpriority claims.[14] Applicant's statement of current monthly income and calculation of commitment period and disposable income, and the Chapter 13 Plan, reflected $4,136 in monthly income, and an anticipated $1,962 in monthly expenses, leaving him with $1,593 in disposable income, which he was to pay the bankruptcy trustee per month for 60 months. In addition, Applicant was required to participate in the mortgage modification mediation program and provide 31 percent of his gross income until mediation or until the loan is modified.[15] On May 26, 2016, the bankruptcy trustee filed a motion to dismiss the Chapter 13 case because Applicant had

[8] GE 9, *supra* note 2, at 39-45.

[9] GE 9 (Amended Voluntary Petition, dated January 25, 2015), at 4-11.

[10] GE 9 (Motion to Dismiss, dated July 2, 2015).

[11] GE 9 (Final Decree, dated February 12, 2016).

[12] GE 4, *supra* note 2, at 3.

[13] GE 10 (Voluntary Petition, dated January 8, 2016).

[14] GE 10, *supra* note 2.

[15] GE 10, *supra* note 2.

failed to provide a copy of his federal income tax return for the tax year 2015.[16] Because Applicant had already paid the bankruptcy trustee $9,381, and the bankruptcy trustee again had not made any disbursements to creditors, $8,490 was eventually refunded to him, and the remainder was retained for administration expenses. That bankruptcy was dismissed in December 2016.[17] Applicant subsequently explained that he was under the impression that he was only supposed to make the established monthly payments to the bankruptcy trustee, and that his income tax refunds ($1,100 for 2014 and $2,400 for 2015) were not required as well. Furthermore, Applicant did not want to relinquish those refunds.[18]

In addition to his two Chapter 13 bankruptcies, the SOR identified seven purportedly delinquent accounts that had been placed for collection or charged off, as generally reflected by Applicant's September 2015, August 2016, June 2017, or May 2018 credit reports. Those debts total approximately $65,147. The current status of those accounts is as follows:

(SOR ¶ 1.c.): This is a second mortgage on Applicant's residence with an original high credit of $60,000 that became delinquent and was placed for collection, with $44,205 charged off.[19] However, commencing in November 2017 – nearly eight months before the SOR was issued – Applicant entered into a repayment plan with the creditor, and since that date, he has been consistently making weekly $125 payments, totaling $14,258, to the creditor. As of April 2019, the unpaid balance has been decreased to $33,891.[20] The account is in the process of being resolved.

(SOR ¶ 1.d.): This is a finance company line of credit with a credit limit of $20,000 that became delinquent and was placed for collection, with an unspecified amount charged off. In May 2015, the account with an unpaid balance of $19,096 was sold to a debt purchaser, erroneously referred to as a factoring company, and as of mid-2017, the remaining unpaid balance was $18,571.[21] In August 2018, Applicant agreed to repayment arrangements under which he has automatic electronic weekly debits of $75 taken from his account. In August 2018, the outstanding balance was $13,696, and by April 2019, the remaining balance had been reduced to $11,196.[22] The account is in process of being resolved.

[16] GE 10 (Motion to Dismiss, dated May 26, 2016); AE 3, *supra* note 2, at 4-5.

[17] GE 10 (Final Decree, dated December 12, 2016).

[18] GE 4, *supra* note 2, at 3.

[19] GE 5, *supra* note 2, at 7; GE 5, *supra* note 2, at 1.

[20] AE D (Letter, dated August 2, 2018); AE AA (Letter, dated April 17, 2009); Tr. at 24-26.

[21] GE 6, *supra* note 2, at 9; GE 7, *supra* note 2, at 14; AE B (Account Statements, various dates).

[22] AE B, supra note 21; AE AC (Account Statement, dated April 12, 2019); Tr. at 25-29.

(SOR ¶ 1.e.): This is a credit union-issued automobile loan with a high credit of $14,380 that became delinquent and was placed for collection, with $1,595 eventually charged off.[23] Applicant identified the vehicle as the one that had been repossessed, and although he believed that there was no deficiency, it appeared that there actually was one. Applicant contacted the creditor and set up a settlement repayment agreement. He made his final payment of $663.63 in April 2019, and the creditor considers the account settled and satisfied.[24] The account has been resolved.

(SOR ¶ 1.f.): This is credit union-issued credit card with a high credit of $1,881 that became delinquent and was placed for collection, with $1,826, not $1,881 as alleged in the SOR, charged off.[25] Applicant contacted the creditor and set up a settlement repayment agreement. He made his final payment of $564.58 in April 2019, and the creditor considers the account settled and satisfied.[26] The account has been resolved.

(SOR ¶ 1.g.): This is an unspecified medical account with an unpaid balance of $729 that was placed for collection and listed in Applicant's credit report identifying him as the responsible party.[27] Applicant disputed the account, claiming that the service was provided for his adult daughter, and although she was previously removed from his medical coverage under TRICARE, this medical provider retained Applicant as the responsible party. Upon receiving the correct information, on April 5, 2019, the creditor removed Applicant's name from the account, and he is no longer responsible for it.[28] The account has been resolved.

(SOR ¶ 1.h.): This is a military exchange charge account with a credit limit of $6,800 and an unpaid balance of $4,500 that was placed for collection, with $3,880 charged off in February 2016.[29] According to his June 2017 credit report, Applicant was making payments.[30] His most recent weekly $100 payment was made on April 19, 2019, and his current balance was reported to be $6,180.[31] There is no indication that the account is currently delinquent.

[23] GE 7, *supra* note 2, at 9; GE 8, *supra* note 2, at 2.

[24] AE M (Letter, dated April 4, 2019); Tr. at 29-31.

[25] GE 7, *supra* note 2, at 8; GE 8, *supra* note 2, at 2.

[26] AE N (Letter, dated April 4, 2019); Tr. at 31-32.

[27] GE 8, *supra* note 2, at 2.

[28] AE K (Letter, dated April 11, 2019); AE J (Letter, dated April 5, 2019).

[29] GE 6, supra note 2, at 7

[30] GE 7, *supra* note 2, at 8; Tr. at 33-34, 37.

[31] AE Q (Letter, dated April 25, 2019); AE E (Checking Transactions – March 2019, dated April 1, 2019); AE F (Checking Transactions – February 2019, dated April 1, 2019); AE G (Checking Transactions – January 2019, dated April 1, 2019); AE AB (Anticipated Payments, undated).

(SOR ¶ 1.i.): This is a military exchange charge account with a credit limit of $3,175 and an unpaid balance of $1,127 that was placed for collection, with $3,000 charged off in February 2016.[32] According to his June 2017 credit report, Applicant was making payments.[33] His most recent $189 payment was made on May 11, 2018, and his current balance was reported to be zero.[34] The account was closed by Applicant in 2018, and, according to the creditor, is in good standing.[35]

Applicant was apparently the victim of predatory practices by some unscrupulous professional organizations from which he had sought professional legal guidance. For example, in 2017, law firm A was sued by the states of Florida and Indiana, seeking injunctive relief, restitution, civil penalties, and other statutory relief for violations of the states' deceptive and unfair trade practices acts by the collection of advance payments; material misrepresentations; prohibited representations; and failure to disclose. Law firm A targeted consumers who were in financial distress, behind on their mortgage loans, or in danger of losing their homes to foreclosure; it falsely represented the type of relief the consumer would receive; it charged consumers upfront fees and continuing fees before they had received the benefit of the service; it misrepresented the likelihood of negotiating, obtaining, or arranging the represented mortgage relief services, as well as the amount of time it would take to accomplish the represented mortgage relief services; and it told consumers to stop making payments to their mortgage loan holder or servicer and to start making payments to law firm A to begin the mortgage loan modification process. According to one attorney general, law firm A caused consumers to suffer past and ongoing substantial injury, including: paying thousands of dollars to law firm A for little or no service in return, going into foreclosure, and even losing their homes.[36]

Law firm B, the organization that was located at the same suite as law firm A, and to which Applicant was referred by law firm A, was also a defendant in an action for consumer fraud, this time by the department of banking of the state of Connecticut. Essentially repeating the concerns of Florida and Indiana against law firm A, Connecticut issued a temporary order to cease and desist; an order to make restitution to any Connecticut residents with whom it entered into negotiation agreements; notice of intent to issue order to cease and desist; notice of intent to impose civil penalty; and notice of right to hearing.[37]

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[32] GE 6, supra note 2, at 8

[33] GE 7, *supra* note 2, at 9; Tr. at 35-36.

[34] AE L (Letter, dated April 12, 2019).

[35] AE L, *supra* note 34; AE C (Letter, dated July 18, 2018).

[36] HE I (State v. - - - (Complaint for Injunctive Relief, Restitution, Civil Penalties, and Other Statutory Relief), e-filed (#51254008) on January 17, 2017) (7th Cir. Fla.)). The managing partner of law firm A has been effectively disbarred in Florida. In re Petition for Disciplinary Revocation of - - -, 153 So.3d 905 (Fla. 2014) (table). Furthermore, that attorney has never been licensed to practice in Indiana. *See* HE II (Consumer Attorney Services v. State, 49S05-1703-PL-161 (Ind. 2017).

[37] HE III (In the Matter of ---, dated March 2, 2015).

Moreover, Applicant's difficulties also extended to company X, the organization through which he was making payments to law firms A and B. A class-action lawsuit was brought against company X in 2011, claiming the company violated Washington State law and the federal Racketeer Influenced and Corrupt Organizations Act (RICO) by conspiring with debt settlement providers to defraud consumers through trust accounts related to useless debt-settlement programs. Company X was the lynchpin in a broad criminal enterprise which directly facilitated the fleecing of hundreds of thousands of unsuspecting consumers by sending hundreds of millions of dollars in exorbitant and unearned fees to fraudulent debt-settlement companies and charged its own inflated fees on each and every transaction. On May 15, 2015, the U.S. District Court issued a $1.45 billion default judgment against company X, which unfortunately for the plaintiffs, had already ceased doing business, leaving doubt that the plaintiffs would be paid.[38]

Aside from the income information appearing in Applicant's two Chapter 13 Voluntary Petitions, described above, on April 30, 2019, Applicant submitted a Personal Financial Statement to reflect his $6,573 net monthly income; $2,613 in monthly expenses; and $3,965 in debt payments, including his two mortgages, with a $2,608 monthly remainder.[39]

Within 180 days before Applicant filed his initial bankruptcy petition in 2014, he received a briefing from a credit counseling agency. He managed to save his primary mortgage from foreclosure, and that account is now current following a mortgage modification. There is substantial evidence to indicate that Applicant's financial situation, now that he has emancipated himself from the predatory law firms and his bankruptcy obligations, and his health has been restored, is now under control.

Work Performance and Character References

The current operations manager of the program in which Applicant works, noted that Applicant's rise to his current position as group leader speaks strongly of his steadfast character and dedication to the project. Applicant's continuous performance in the leadership role demonstrates dependability, accountability, dedication, and a firm foundation of generally good characteristic traits such as trustworthiness and ability to lead peers.[40] The modification associate manager of the program also referred to Applicant's dependability, accountability, and dedication, and he added that Applicant's character and integrity have never been called into question.[41]

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[38] AE T (Press Release, dated May 18, 2015); AE U, *supra* note 3.

[39] AE W (Personal Financial Statement, dated April 30, 2019).

[40] AE R (Character Reference, dated April 23, 2019).

[41] AE S (Character Reference, dated April 23, 2019).

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."[42] 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."[43]

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, 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."[44] 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.[45]

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

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

[44] "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).

[45] *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."[46]

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."[47] 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 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.

[46] *Egan*, 484 U.S. at 531.

[47] *See* Exec. Or. 10865 § 7.

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; and

(c) a history of not meeting financial obligations.

Some of Applicant's accounts became delinquent, a vehicle was repossessed, and several accounts were charged off. Applicant filed for bankruptcy under Chapter 13 in 2014 and 2016, and on both occasions, the bankruptcy was dismissed because of Applicant's failure to furnish the bankruptcy trustee some required documentation related to his federal income tax refunds. The SOR identified seven purportedly delinquent accounts, totaling approximately $65,147. AG ¶¶ 19(a) and 19(c) have been established. As there is no evidence that Applicant was unwilling to satisfy his debts regardless of the ability to do so, 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;[48]
>
> (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;[49] and

[48] 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)).

[49] 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

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

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) all apply. Applicant's financial difficulties occurred as a result of major back surgery; his employer's rule that he could not return to work until he was completely healed; and insufficient disability income to enable him to make his routine monthly payments on all of his accounts. Applicant did not attempt to ignore his creditors. Instead, he sought professional legal guidance that resulted in his becoming a victim of consumer fraud according to three different states. His difficulties were exacerbated by the predatory practices of some unscrupulous professional organizations from which he sought professional legal guidance, as well as the failure of the bankruptcy trustee to disburse funds to Applicant's creditors. Those circumstances were not only highly unusual, but largely beyond Applicant's control. Applicant naively followed the instructions of his attorneys, paying them rather than his creditors. Those attorneys apparently accomplished nothing in his behalf, or possibly did not even try to do anything except collect his money. However, now that Applicant has cast aside those law firms, and removed himself from the bankruptcies, he contacted his creditors and started paying them directly. To date, his good-faith efforts have resulted in resolving five of the accounts by paying off four of them and proving that the fifth account was not his responsibility. He is in the process of resolving the two remaining accounts by remaining in compliance with the repayment arrangements that were established with the creditors. Applicant's actions, under the circumstances, no longer cast doubt on his current reliability, trustworthiness, and good judgment.[50]

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.

> 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)).

[50] *See* ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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 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; (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.[51]

There is some evidence against mitigating Applicant's conduct. Some of Applicant's accounts became delinquent, a vehicle was repossessed, and several accounts were charged off. Applicant filed for bankruptcy under Chapter 13 on two occasions, and each time, the bankruptcy was dismissed because of Applicant's failure to furnish the bankruptcy trustee some required documentation related to his federal income tax refunds. Applicant had seven purportedly delinquent accounts, totaling approximately $65,147.

The mitigating evidence under the whole-person concept is more substantial. Applicant is a 54-year-old employee of a defense contractor. He has been serving as a sheet metal mechanic with his current employer since October 2014. A 1983 high school graduate, he earned some college credits, but no degree. Applicant enlisted in the U.S. Navy in May 1984, and he was honorably retired as a petty officer first class (E-6) in May 2004. During his military career, Applicant was deployed on several occasions to the Eastern Mediterranean Sea and the Persian Gulf. He was awarded the Navy Sea Service Deployment Ribbon (four awards); and the Navy Battle "E" Ribbon (four awards). He was granted a secret clearance in 1986, and it was renewed in 2005.

Applicant did not attempt to ignore his creditors. Instead, he sought professional legal guidance that resulted in his becoming a victim of consumer fraud. Applicant naively followed the instructions of his attorneys, paying them rather than his creditors. However,

[51] *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).

now that Applicant has cast aside those law firms, and removed himself from the bankruptcies, he contacted his creditors and started paying them directly. To date, his good-faith efforts have resulted in resolving five of the accounts, and he in the process of resolving the two remaining accounts by remaining in compliance with the repayment arrangements that were established with the creditors. Applicant's actions to restore fiscal stability on his own, without the bankruptcy court's assistance, and the interference of unscrupulous professional organizations, have been remarkable. His financial situation is now under control. Under the circumstances, his actions no longer cast doubt on his current reliability, trustworthiness, and good judgment.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:[52]

> 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 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 strong track record of both debt reduction and elimination efforts, finally avoiding the predatory efforts of unscrupulous professional organizations who sought to fleece him rather than help him. Overall, the evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his 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:

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

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. through 1.i.: 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.

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ROBERT ROBINSON GALES
Administrative Judge