



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



In the matter of:)
)
-----) ISCR Case No. 12-09337
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: Jerome C. Ware, Esquire

05/03/2013

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On December 11, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On March 16, 2010, he submitted another e-QIP version of a SF 86.² On August 21, 2012, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to him, under 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

¹ GE 2 ((SF 86), dated December 11, 2009).

² GE 1 ((SF 86), dated March 16, 2010).

29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. 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.

Applicant received the SOR on October 1, 2012. In a sworn statement, dated October 18, 2012, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. On November 30, 2012, citing the Directive, Enclosure 3, Additional Procedural Guidance, ¶ E3.1.7., Department Counsel requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on December 13, 2012. The case was initially assigned to me on January 4, 2013, but because Applicant had been deployed overseas for an extended period of time, the case file was returned for future scheduling. In April 2013, Applicant's attorney informed Department Counsel of Applicant's return to the United States for a brief period of time. The case was reassigned to me April 9, 2013. A Notice of Hearing was issued on April 9, 2013, and I convened the hearing, as scheduled, by video teleconference, on April 15, 2013. Because of technical difficulties with the video teleconference system, only a portion of the hearing was completed. Another Notice of Hearing was issued on April 16, 2013, and I convened the hearing, as scheduled, by video teleconference, on April 17, 2013.³

During the two segments of the hearing, 5 Government exhibits (GE 1 through GE 5) and 18 Applicant exhibits (AE A through AE R) were admitted into evidence without objection. Applicant testified. The first transcript (Tr. I) was received on April 24, 2013, and the second transcript (Tr. II) was received on April 26, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted one additional document which was marked as AE S, and admitted into evidence without objection. The record closed on April 26, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted a portion of the sole factual allegation pertaining to financial considerations (¶ 1.a.). Applicant's 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 52-year-old employee of a defense contractor who, since March 2010, has served as a linguist for U.S. military forces in Afghanistan. He was previously employed as a role player and cultural advisor during military training at facilities within the United States.⁴ He has a secret clearance that was granted to him in 2010.⁵

³ Applicant specifically waived the 15-day notice of hearing requirement set forth in the Directive, Enclosure 3, Additional Procedural Guidance, ¶ E3.1.8. See E-mail from Applicant's Attorney, dated April 8, 2013; 1st Tr. at 10.

Applicant was born in Afghanistan, immigrated as a refugee to the United States in 1982, and became a naturalized U.S. citizen in January 1992. Applicant's father is deceased; his mother and siblings all reside in the United States, and all are naturalized U.S. citizens. Several of his siblings serve as linguists or role players for defense contractors. Applicant has never served with the U.S. military or with any military service of another country. He was married in 1986, and divorced in 2007. He has four sons (born in 1987, 1991, 1994, and 2004 respectively).

Financial Considerations

In the late 1990's, Applicant sustained workplace injuries to his neck, rotator cuff, and back, while he was employed as a machine operator. He underwent rotator cuff surgery, and received workers compensation payments, and then Social Security disability payments.⁶ There apparently was nothing unusual about Applicant's finances until about 2002. Through his ownership of a corporation in the early 2000s, Applicant worked both part-time and, on occasion, full-time at a restaurant he established in August 2001, primarily to provide a business opportunity for his son. While at the restaurant, Applicant sustained another injury to his neck and shoulder, and underwent neck fusion surgery. He continues to receive periodic injections of Cortisol to control his neck pain for up to three or four months.⁷ Because he was unable to continue helping run the business, the restaurant closed in mid-2002.⁸ There were substantial startup costs associated with the restaurant, and it had not been in operation long enough to generate income. Applicant's available financial resources, including his wife's income and his disability payments, were insufficient to enable him to maintain all of his accounts in a current status, and they became delinquent. In June 2002, Applicant filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code. His unsecured debts totaling \$129,894, were discharged.⁹

Appellant was unemployed from the time of his 2002 injury until 2007.¹⁰ In 2006, Applicant's corporation opened a liquor store, and he and his family operated it until 2007, when it was sold.¹¹

When Applicant initially applied for Social Security disability benefits, he completed some paperwork and was required to be examined by physicians selected by

⁴ GE 3 (Counter Intelligence Questionnaire, dated March 23, 2010), at 2.

⁵ GE 1, *supra* note 2, at 42-43.

⁶ Tr. II, at 12-14, 83-84.

⁷ Tr. II, at 52-54.

⁸ GE 5 (Personal Subject Interview, dated April 15, 2010), at 4, 7.

⁹ GE 5, *supra* note 8, at 7; GE 3, *supra* note 4, at 12.

¹⁰ GE 3, *supra* note 4, at 2; GE 5, *supra* note 8, at 4.

¹¹ GE 5, *supra* note 8, at 4.

the Social Security Administration (SSA). The physicians supported Applicant's claim for benefits, and SSA determined the monetary amount to be granted.¹² Over time, every two or three years, Applicant was required to submit to additional medical examinations.¹³ His most recent examination was in 2007 or 2008.¹⁴ Applicant was also required to inform the SSA regarding any work performed by him, and he generally did so by telephone. In January 2010, the SSA inquired about his employment during 2008, and asked him to complete a work activity report to update the information in his file.¹⁵ In July 2010, the SSA informed Applicant that the information he had previously furnished them had been forwarded to a representative to determine what effect the changes in his work will have on his disability payments.¹⁶

In April 2011, the SSA determined that he was "no longer entitled to . . . disability payments for October 2009 through December 2009 and February 2010 through February 2011 because of substantial work."¹⁷ The SSA added that Applicant's payments continued during his trial work months while he tested his ability to work. His trial work period ended June 2009.¹⁸ Applicant was declared entitled to payments for January 2010 because his work was not substantial for that time, and he was deemed entitled to payments beginning March 2011 because he was no longer doing substantial work. He was informed he would receive \$1,332 for April 2011 in about mid-May 2011, with payments continuing monthly thereafter for an undetermined period.¹⁹ SSA also stated that "[b]ecause we did not stop your checks timely, you were paid \$22,837.80 too much in benefits."²⁰ He was informed that the overpayment should be refunded with 30 days, and if it was not, future benefits would be withheld until the overpayment is fully recovered.²¹ He was also advised that he could file an appeal or request a waiver.²² Similar, but not identical, letters were sent in February 2011, May 2011, and June 2011.²³

¹² Tr. II, at 75-76.

¹³ Tr. II, at 77-78.

¹⁴ Tr. II, at 78-79.

¹⁵ AE A (SSA Letter, dated January 10, 2010).

¹⁶ AE B (SSA Letter, dated July 21, 2010). AE I (SSA Letter, dated July 21, 2010) is identical to AE B.

¹⁷ AE C (SSA Letter, dated April 1, 2011).

¹⁸ AE C, *supra* note 17.

¹⁹ AE C, *supra* note 17.

²⁰ AE C, *supra* note 17.

²¹ AE C, *supra* note 17.

²² AE C, *supra* note 17.

²³ AE S (SSA Letter, dated February 23, 2011); AE D (SSA Letter, dated May 25, 2011); AE E (SSA Letter, dated June 9, 2011).

In March 2012, the SSA reaffirmed its earlier decision and again requested payment of the \$22,837.80.²⁴ However, four months later, in July 2012, the SSA reversed an earlier decision made in April 2011, and decided that Applicant was not eligible for disability payments from March 2011 to May 2011, and declared that there had been an overpayment of \$4,285.50 for that period.²⁵ He was again informed that the overpayment, now in the amount of \$27,123.30, should be refunded with 30 days, and if it was not, future benefits would be withheld until the overpayment is fully recovered.²⁶ He was also advised that he could file an appeal or request a waiver.²⁷ Applicant acknowledged the situation, but he planned on disputing the overpayment because he felt the error was due to the SSA's mistake.²⁸ He subsequently modified his position, and now agrees that he needs to repay the disputed amount.²⁹

During the period in which Applicant received his Social Security disability benefits, he only applied for those benefits once, and thereafter, never reapplied for them. He simply furnished the SSA requested information, generally by telephone or in writing, but on occasion, in person, and the benefits continued.³⁰ Communications with the SSA was extremely difficult for Applicant, especially while he is deployed. The SSA would send letters to Applicant's home in the United States, and his son would either forward them to his father or wait until they had an opportunity to speak by telephone. While he is deployed, Applicant resides in a tent with three soldiers, and they do not have any form of communications, such as telephones or Internet.³¹ There is also a nine-hour time difference. The commander has an office telephone and several computers, and personnel are permitted to periodically use the telephone for 15 minutes per call, and the computers for about 20 minutes.³² Unfortunately, when Applicant has attempted to make some calls to the SSA, he might be placed on hold for longer than 30 or 45 minutes.³³ Applicant returns to the United States every six months for two weeks of home leave, and during those brief periods he generally attempts to resolve issues with the SSA.

²⁴ AE F (SSA Letter, dated March 2, 2012).

²⁵ AE G (SSA Letter, dated July 8, 2012).

²⁶ AE G, *supra* note 25.

²⁷ AE G, *supra* note 25.

²⁸ GE 4 (Counter Intelligence Questionnaire, dated May 6, 2012), at 2.

²⁹ Tr. II, at 84-85.

³⁰ Tr. II, at 80.

³¹ Tr. II, at 11, 17, 27.

³² Tr. II, at 27.

³³ Tr. II, at 27.

On September 7, 2012, after discussing various payment options,³⁴ Applicant and the SSA agreed that, effective October 2012, Applicant would have \$300 per month deducted from his benefit amount until the balance is paid in full, and that if he is not currently receiving benefits, he would be responsible for mailing in his payments.³⁵ He is making the payments, through his son in the United States, by check each month.³⁶ In November 2012, the SSA acknowledged payments and a decrease in the balance from \$22,837.80 and indicated the new balance was \$3,985.50.³⁷ However, confusing the entire situation, in December 2012, the SSA declared there was an unexplained increase in the balance from \$3,985.50 to \$26,223.30, while acknowledging payments.³⁸ The balance as of February 2013, was \$25,623.30.³⁹

In April 2010, Applicant completed a personal financial statement that indicated his monthly net income, including disability payments, was \$4,040; his monthly expenses were \$3,920; and his monthly net remainder available for discretionary spending or savings was \$120.⁴⁰ When Applicant started his current position, he started earning an annual salary of \$215,000, and as of the date of his May 2012 counter intelligence interview, he had \$120,000 in savings.⁴¹

Work Performance and Character References

In recognition of Applicant's "exceptional performance and dedication" while stationed in Afghanistan from April 2010 to January 2012, Applicant was presented with a certificate of merit and appreciation for his "selfless service."⁴² His annual performance assessments reveal an employee whose rating general is "exceeds requirement," while some of his ratings are of the higher level.⁴³ He has been described as a valuable asset to any units he supported, as well as an "essential asset in the execution of key leader engagements, information operations, electronic support, and other operations."⁴⁴ Applicant accompanies the military units in the field on their missions. While he does not carry a weapon, he wears a helmet and flak jacket.⁴⁵

³⁴ Tr. II, at 81-82.

³⁵ AE H (Statement of Claimant or Other Person, dated September 7, 2012).

³⁶ Tr. II, at 82-83.

³⁷ AE O (SSA Billing Statement, dated November 15, 2012).

³⁸ AE P (SSA Billing Statement, dated December 21, 2012).

³⁹ AE Q (SSA Billing Statement, dated February 25, 2013).

⁴⁰ GE 5, *supra* note 7, at 8-9.

⁴¹ GE 4, *supra* note 27, at 2.

⁴² AE L (Certificate, dated January 1, 2012).

⁴³ AE K (2011 Annual Assessment, dated November 25, 2011); AE M (2010 Performance Evaluation, dated November 20, 2010).

⁴⁴ AE J (Character Reference, dated May 28, 2010); AE N (Letter, undated).

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.”⁴⁶ 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.”⁴⁷

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.”⁴⁸ 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.⁴⁹

⁴⁵ Tr. II, at 58.

⁴⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴⁸ “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).

⁴⁹ 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.”⁵⁰

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.”⁵¹ 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. In the late 1990’s, Applicant sustained workplace injuries and received workers compensation payments, and then Social Security disability payments. There apparently was nothing unusual about Applicant’s finances until about

⁵⁰ *Egan*, 484 U.S. at 531

⁵¹ See Exec. Or. 10865 § 7.

2002. His earlier injuries and additional subsequent injuries resulted in the closure of a business he had previously established. With substantial startup costs associated with the business, and insufficient income from the faltering business. Applicant's available financial resources, including his wife's income and his disability payments, were insufficient to enable him to maintain all of his accounts in a current status, and they became delinquent. In June 2002, Applicant filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and his unsecured non-priority debts were eventually discharged.

Applicant applied for Social Security disability benefits, and he was examined by physicians selected by the SSA. The physicians supported Applicant's claim for benefits, and SSA determined the monetary amount to be granted. In April 2011, the SSA determined that he was no longer entitled to disability payments for periods in 2009 through 2011 because of "substantial work." Other periods were approved. He was informed that he had been paid \$22,837.80 too much in benefits, and was informed that the overpayment should be refunded with 30 days. He was also advised that he could file an appeal or request a waiver. In March 2012, the SSA reaffirmed its earlier decision and again requested payment of the \$22,837.80. However, four months later, the SSA reversed an earlier decision, and decided that Applicant was not eligible for disability payments for several months in 2011, and declared that there had been an overpayment of \$4,285.50 for that period. He was again informed that the overpayment, now in the amount of \$27,123.30, should be refunded within 30 days. He was also advised that he could file an appeal or request a waiver. Applicant acknowledged the situation, but he initially planned on disputing the overpayment because he felt the error was due to the SSA's mistake. He subsequently modified his position, and now agrees that he needs to repay the disputed overpayment amount. Since his debts were discharged, other than the one debt to the SSA, there is no evidence that Applicant has experienced financial difficulties, or that he is unable to make routine monthly payments for his accounts. To the contrary, there is evidence that Applicant currently has \$120,000 in savings, with an annual salary of \$215,000. 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*.⁵²

⁵² The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

AG ¶¶ 20(a), 20(b), and 20(d) apply, and AG ¶ 20(c) partially applies. Applicant's financial difficulties occurred in 2002 as a result of workplace injuries sustained in the late 1990's and in 2002. Unable to work over extended periods, a business folded, leaving him with startup costs that were too burdensome for him to handle. Those factors – the unexpected medical emergencies, his loss of employment, and the business downturn – were largely beyond Applicant's control. He filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code, and his unsecured debts were eventually discharged. There is no evidence of continuing financial difficulties since his debts were discharged approximately 13 years ago.

There is, however, evidence that the SSA made periodic eligibility determinations regarding Applicant's application for disability benefits, and that the SSA subsequently made several corrections to earlier eligibility determinations. Applicant was periodically examined by physicians selected by the SSA, and based on the recommendations of those physicians, as well as Applicant's input regarding employment, SSA eligibility decisions were made. The evidence reflects that the SSA and Applicant maintained a continuing exchange of information over the years. Those decisions were reversed two or three years later, and the SSA informed Applicant that he had to refund \$27,123.30 within 30 days. Overseas, and in a combat zone with limited accessibility to communications, Applicant disputed the inconsistent decisions of the SSA and attempted to resolve the purported overpayment.

While Applicant was disappointed and dismayed by the eventual changes by the SSA regarding his eligibility for disability payments covering certain periods, and his disappointment resulted in his initial refusal to resolve the disputed amount because it was due to the SSA's errors, he subsequently modified his position, and agreed to repay the disputed amount. In so doing, Applicant acted responsibly by addressing his SSA debt. The SSA also advised him that he could file an appeal or request a waiver, but there is no evidence that he took either of those two options. In September 2012, after discussing various payment options, Applicant and the SSA agreed that, effective October 2012, Applicant would have \$300 per month deducted from his benefit amount until the balance is paid in full, and that if he is not currently receiving benefits, he would be responsible for mailing in his payments. Applicant has been making his monthly payments since October 2012.⁵³ Considering the fluid nature of the SSA positions, as

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)).

⁵³ "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

well as Applicant's overseas employment and poor available communications, Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.⁵⁴ While there is no evidence that Applicant has received or is receiving counseling for the SSA balance, now that there is an agreement in place, and the agreement is being followed, and with \$120,000 in savings, with an annual salary of \$215,000, there are clear indications that the "problem" is being resolved or is under control.

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.⁵⁵

There is some evidence against mitigating Applicant's conduct. In 2002, his unsecured non-priority debts totaling \$129,894, were discharged in bankruptcy. Over a multiple year period, Applicant received an overpayment of disability benefits from the SSA totaling \$27,123.30. The SSA advised him that the amount should be refunded within 30 days, and that he could appeal the determination. The overpayment was the result of an SSA reassessment that Applicant was not entitled to that amount, based on his other periodic "substantial work." Although Applicant has \$120,000 in savings, and an annual salary of \$215,000, he opted to pay the SSA \$300 per month, which was an arrangement that was satisfactory to the SSA.

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.

⁵⁴ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁵⁵ 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).

The mitigating evidence under the whole-person concept is more substantial. When Applicant initially applied for Social Security disability benefits, he was examined by physicians selected by the SSA, and they supported his claim for benefits. The SSA determined the monetary amount to be granted. Over time, every two or three years, Applicant was required to submit to additional medical examinations. He was also required to inform the SSA regarding any work performed by him, and he generally did so by telephone. In April 2011, the SSA determined that he was no longer entitled to disability payments for certain periods in 2009 through 2011 because of “substantial work.” Other periods were approved. He was informed that he had been paid \$22,837.80 too much in benefits. In March 2012, the SSA reaffirmed its earlier decision and again requested the overpayment. However, four months later, the SSA reversed an earlier decision, and decided that Applicant was not eligible for disability payments for several months in 2011, and declared that there had been an overpayment of \$4,285.50 for that period. He was again informed that the overpayment, now in the amount of \$27,123.30, should be refunded within 30 days.

Applicant is a linguist serving with U.S. military combat forces in Afghanistan, and is generally in harm’s way. Communications with the SSA was extremely difficult for Applicant, especially while he is deployed, because he resides in a tent with three soldiers, and they do not have any form of communications, such as telephones or Internet. There is also a nine-hour time difference. The commander has an office telephone and several computers, and personnel are permitted to periodically use the telephone for 15 minutes per call, and the computers for about 20 minutes. Unfortunately, when Applicant has attempted to make some calls to the SSA, he might be placed on hold for longer than 30 or 45 minutes. Applicant returns to the United States every six months for two weeks of home leave, and during those brief periods he generally attempts to resolve issues with the SSA. In September 2012, after discussing various payment options, Applicant and the SSA agreed that, effective October 2012, Applicant would have \$300 per month deducted from his benefit amount until the balance is paid in full, and that if he is not currently receiving benefits, he would be responsible for mailing in his payments. Applicant has been making his monthly payments since October 2012. Applicant’s actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment. He possesses an excellent reputation in the workplace.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁵⁶

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

⁵⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 “meaningful track record” of debt reduction and elimination pertaining to the sole debt, an overpayment by the SSA. He has made some significant timely efforts to resolve this overpayment, but his efforts were made more difficult by the limitations on his availability of communications in Afghanistan. In addition, there was the fluid nature of the SSA decisions. While Applicant may have the resources to pay the entire overpayment balance in its entirety now, Applicant chose an option offered to him and approved by the SSA. The selected repayment plan is reasonable. I found Applicant to be credible, and his service in a combat zone warrants substantial credit. Overall, the evidence leaves me without 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 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge