



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



In the matter of:)
)
-----) ISCR Case No. 12-09901
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

03/19/2013

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 May 17, 2012, 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 August 31, 2012, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on September 11, 2012.² On November 28, 2012, the 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 29, 2005) (AG), applicable to

¹ GE 1 ((SF 86), dated May 17, 2012).

² GE 3 (Applicant's Answers to Interrogatories, dated September 11, 2012).

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.

It is unclear when Applicant received the SOR. In a sworn statement, dated December 10, 2012, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on January 10, 2013. The case was assigned to me on January 16, 2013. A Notice of Hearing was issued on January 18, 2013, and I convened the hearing, as scheduled, on February 12, 2013.

During the hearing, 7 Government exhibits (GE 1 through GE 7) and 11 of Applicant's 17 exhibits (AE B through AE H, AE J, AE N, and AE P and AE Q) were admitted into evidence without objection. The remaining items were marked for identification and objected to by the Government. Applicant concurred in the objections, and those items, marked for identification, were excluded from consideration.³ Applicant testified. The transcript (Tr.) was received on February 20, 2013. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted eight additional documents which were marked as exhibits (AE R through AE Y) and admitted into evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant denied all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.j.). After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Applicant is a 34-year-old employee of a defense contractor who, since May 2011, had served initially as a technical data specialist II, but since June 2012, has been a supply support specialist. He was previously employed by other employers in various positions, including supply support, technical writer, management assistant, QA lead, technical aide, and management specialist.⁴ He had one relatively brief period of unemployment of one or two month's duration in 2006.⁵ Applicant has never served in the U.S. military.⁶ He was granted a secret security clearance in March 2003, but it expired administratively.⁷ In May 2012, he was granted an interim security clearance,

³ Tr. at 43-45. The six excluded documents were appended to the record.

⁴ GE 1, *supra* note 1, at 12-19; GE 3 (Personal Subject Interview, dated June 5, 2012), at 1.

⁵ Tr. at 49.

⁶ GE 1, *supra* note 1, at 20.

⁷ AE Q (Security Clearance History, undated); Tr. at 7, 40.

but it was apparently suspended as part of the security clearance review process.⁸ Applicant received a bachelor's degree in business administration in 2009, and a master's degree in business in 2012.⁹ He was married the first time in September 2006, and divorced in September 2007.¹⁰ He married again in May 2010.¹¹ Applicant has one son, born in 2001.¹²

Financial Considerations

It is unclear when, or if, Applicant started experiencing financial difficulties which might lead to accounts becoming delinquent and placed for collection or charged off. There is a credit report from May 2012, indicating a number of Applicant's accounts were delinquent as early as 2007-2008.¹³ Applicant attributed those financial problems to his first wife, and claimed that he contacted his creditors and resolved the accounts where there was no dispute as to unpaid balances.¹⁴ There were other accounts that had disputed balances. Unable to have creditors or collection agents correct the disputed balances, at about the time he completed his SF 86, Applicant engaged the professional services of a company that specializes in challenging credit reporting companies to remove fraudulent and/or inaccurate accounts from credit reports.¹⁵

In response to the DOD interrogatories, Applicant provided a personal financial statement reflecting a family monthly net income of \$5,639.66; monthly household, utility, transportation, and food expenses of \$2,226; and monthly debt repayments of \$717.74; leaving a monthly remainder of \$2,695.92, available for discretionary spending or savings.¹⁶ Applicant also reported a savings account with \$2,000, as well as \$12,000 in stocks and bonds.¹⁷ When he last viewed his retirement account, he had about \$15,000 in it.¹⁸ Applicant is current on his rent and his utility bills.¹⁹

⁸ Statement, dated December 13, 2012, at 3, included in Applicant's binder containing AEs.

⁹ GE 1, *supra* note 1, at 10-12; Tr. at 6; Personal Subject Interview, *supra* note 4, at 1; Tr. at 57.

¹⁰ Personal Subject Interview, *supra* note 4, at 2.

¹¹ GE 1, *supra* note 1, at 23.

¹² Personal Subject Interview, *supra* note 4, at 2.

¹³ GE 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 30, 2012), at 7, 14, 16-18.

¹⁴ GE 3 (Letter, dated September 11, 2012), at 1, attached to Applicant's Answers to Interrogatories); GE 1, *supra* note 1, at 38, wherein Applicant noted: "There are about 3 to 4 creditors [with whom] I do not agree on the amount owed due to inaccuracy. These creditors can't provide me with the documentations that I requested that supports the creditor's decision. Therefore, the creditors are being disputed. . . . During my first marriage I collected a good amount of bills and debt. Due to a divorce, I adopted all of the bills."

¹⁵ GE 4 (Letter, dated May 21, 2012); Tr. at 30, 52.

¹⁶ Personal Financial Statement, dated September 11, 2012, attached to GE 3, *supra* note 2.

¹⁷ Personal Financial Statement, *supra* note 16.

¹⁸ Tr. at 50.

The SOR identified ten purportedly continuing delinquencies. There is an account, erroneously listed two separate times in the SOR, referred to as a line of credit and as a credit card, but which, according to Applicant, was actually a loan, with a major bank, with a high credit of \$9,493, and an unpaid balance of \$11,113, of which \$1,400 was past due, that was placed for collection and charged off (**SOR ¶¶ 1.a. and 1.h.**).²⁰ Although the May 2012 credit report (using information reported by Equifax) listed the account as in collection and charged off, two subsequent Equifax credit reports referred to the account as a judgment for \$11,113 obtained in August 2011.²¹ One Equifax credit report continued to refer to the account as merely charged off.²² Applicant contended that he routinely made his monthly payments on the account and the balance should have decreased. When the balance “dramatically increased,” without explanation, his efforts to resolve the increased balance were unsuccessful, and the account was turned over to his debt resolution company.²³ Applicant contemplated hiring an attorney, but decided to make one last effort by contacting the creditor.²⁴ In February 2013, the creditor and Applicant agreed to settle the account, with a reported balance of \$663.58, for \$2,500 to be paid in one installment of \$1,500, and four installments of \$250, commencing on February 15, 2013.²⁵ Applicant made the first payment of \$1,500 on February 8, 2013.²⁶ The account is in the process of being resolved.

There is a utility account in the amount of \$553 that was placed for collection and charged off (**SOR ¶ 1.b.**).²⁷ Applicant determined that his ex-wife had opened the account in his name after their divorce without his knowledge or authorization, but when he initially disputed it, the creditor refused to delete his name from the account.²⁸ Finally, after challenging the account due to identity theft and fraud, and having the creditor conduct an investigation, on October 31, 2012, the creditor acknowledged the error, and moved to delete the negative information from Applicant’s credit reports.²⁹ The account has been resolved.

¹⁹ Tr. at 50.

²⁰ GE 7, *supra* note 13, at 8, 24; Tr. at 58, 60. The credit report reflects two balances for the account reported by two different credit reporting agencies. Equifax reported the balance as \$11,113, while TransUnion reported it as \$9,663.

²¹ GE 6 (Equifax Credit Report, dated September 22, 2012), at 1; GE 5 (Equifax Credit Report, dated January 14, 2013), at 1.

²² AE J (Equifax Credit Report, dated November 13, 2012), at 4.

²³ Personal Subject Interview, *supra* note 4, at 2; Tr. at 59, 62; AE B (Letter, dated December 7, 2012).

²⁴ Tr. at 62-63.

²⁵ AE D (Letter, dated February 8, 2013).

²⁶ AE D (Money Orders, dated February 8, 2013).

²⁷ GE 7, *supra* note 13, at 19; AE J, *supra* note 22, at 12; GE 6, *supra* note 21, at 2; GE 5, *supra* note 21, at 2.

²⁸ Personal Subject Interview, *supra* note 4, at 3; Tr. at 65-70.

²⁹ AE C (Letter, dated October 31, 2012).

There is a jewelry store account with a high credit of \$1,405 that was placed for collection and charged off.³⁰ Applicant indicated he purchased his ex-wife's wedding ring at the store for about \$1,200, and made monthly payments on the account until the creditor went out of business, and payments started being returned to him.³¹ The account was subsequently transferred or sold, the high credit was increased to \$1,628, and the past due balance was increased to \$2,055 (**SOR ¶ 1.c.**).³² Applicant attempted to reach the collection agent regarding the increased balance, but his calls were never returned.³³ He also sought verification of the debt and requested a complete payment history and other relevant documentation, but all he received was another letter, with no supporting documentation. He turned the account over to his debt resolution company.³⁴ Applicant and the collection agent subsequently agreed to a settlement in the amount of \$1,000, and Applicant paid that amount on January 30, 2013.³⁵ The account has been resolved.

There are five student loans with a variety of creditors, some of whom are identified in the SOR. One unattributed joint loan, purportedly opened in June 2011 with a high credit of \$3,923 and a balance of \$4,208, of which \$2,015 was over 120 days past due, is listed in Applicant's March 2012 credit report (**SOR ¶ 1.d.**).³⁶ The September 2012 credit report increased the past due amount to \$4,031, and indicated the account was over 180 days past due.³⁷ The January 2013 credit report increased the past due amount to \$6,240, and indicated the account was over 180 days past due.³⁸ Applicant was unaware of the lender's identification, and disputed the allegation. In response to Applicant's recent inquiry, the creditor confirmed that the loan was no longer being serviced by that particular company, and the listing on Applicant's credit report will be deleted.³⁹

Another unattributed joint loan, also purportedly opened in June 2011 with a high credit of \$5,858 and a balance of \$6,232, of which \$3,009 was over 120 days past due, is listed in Applicant's March 2012 credit report (**SOR ¶ 1.e.**).⁴⁰ The September 2012 credit report increased the past due amount to \$4,031, and indicated the account was

³⁰ GE 7, *supra* note 13, at 23.

³¹ Personal Subject Interview, *supra* note 4, at 3; Tr. at 70.

³² GE 7, *supra* note 13, at 8.

³³ Personal Subject Interview, *supra* note 4, at 3.

³⁴ AE B, *supra* note 23.

³⁵ AE H (Letter, dated February 5, 2013); AE H (Check, dated January 30, 2013).

³⁶ GE 7, *supra* note 13, at 6.

³⁷ GE 6, *supra* note 21, at 2.

³⁸ GE 5, *supra* note 21, at 3.

³⁹ AE S (Letter, dated February 13, 2013).

⁴⁰ GE 7, *supra* note 13, at 6.

over 180 days past due.⁴¹ The January 2013 credit report increased the past due amount to \$6,240, and indicated the account was over 180 days past due.⁴² Applicant was unaware of the lender's identification, and he disputed the allegation. In response to Applicant's recent inquiry, the creditor confirmed that the loan was no longer being serviced by that particular company, and the listing on Applicant's credit report will be deleted.⁴³

There is a deferred student loan, purportedly opened in September 2005 with a high credit of \$3,867 and a zero balance that was over 180 days past due when a claim was filed with the Government for the insured balance of the loan. The account is listed in Applicant's March 2012 credit report (**SOR ¶ 1.f.**).⁴⁴ Both the September 2012 and January 2013 credit reports indicated the account was "transferred to recovery."⁴⁵ The November 2012 credit report reflects the loan as "paid and closed."⁴⁶ Applicant was unaware of the lender's identification, and he disputed the allegation. He subsequently learned that the loan was consolidated with another student loan, and the status of the combined loans is considered deferred.⁴⁷

There is another deferred student loan, purportedly opened in April 2006 with a high credit of \$2,762 and a zero balance that was over 180 days past due when a claim was filed with the Government for the insured balance of the loan. The account is listed in Applicant's March 2012 credit report (**SOR ¶ 1.g.**).⁴⁸ Neither the September 2012 nor the January 2013 credit report listed the account. Applicant was unaware of the lender's identification, and disputed the allegation. The November 2012 credit report reflects the loan as "paid and closed."⁴⁹ Applicant was unaware of the lender's identification, and he disputed the allegation. He subsequently learned that the loan was consolidated with another student loan, and the status of the combined loans is considered deferred.⁵⁰

There is a student loan from a national bank, purportedly opened in August 2006 with both a high credit and balance of \$14,634 that was placed for collection and charged off. The account is listed in Applicant's March 2012 credit report (**SOR ¶ 1.i.**).⁵¹

⁴¹ GE 6, *supra* note 21, at 2.

⁴² GE 5, *supra* note 21, at 3.

⁴³ AE S, *supra* note 39.

⁴⁴ GE 7, *supra* note 13, at 7.

⁴⁵ GE 6, *supra* note 21, at 4; GE 5, *supra* note 21, at 5.

⁴⁶ AE J, *supra* note 22, at 4.

⁴⁷ AE R (Letter, dated February 14, 2013), at 1; AE T (FedLoan Servicing Deferment/Forbearance Loan Declaration, dated January 30, 2013), at 2; AE V (Equifax Alert, dated February 7, 2013).

⁴⁸ GE 7, *supra* note 13, at 7.

⁴⁹ AE J, *supra* note 22, at 4.

⁵⁰ AE R, *supra* note 47, at 1-2; AE T, *supra* note 47, at 2; AE V, *supra* note 47.

⁵¹ GE 7, *supra* note 13, at 9.

Both the September 2012 and January 2013 credit reports indicated the account was being disputed.⁵² The creditor is unable to locate any loan documents in Applicant's name or social security number, and a manager suggested that Applicant file a report with the creditor's fraud department to initiate the removal of the listing from Applicant's credit reports.⁵³ Applicant filed the report.⁵⁴

Applicant turned all five student loan accounts over to his debt resolution company to dispute or validate.⁵⁵ He also presented documentation from the National Student Loan Data System (NSLDS). Every student loan ever received by Applicant, whether it was direct consolidated subsidized or unsubsidized, direct Stafford subsidized or unsubsidized, or Federal Family Education Loan (FFEL), was listed in the system. Those official records from the U.S. Department of Education indicated all of his student loans were in one of the following statuses: non-defaulted, paid in full through consolidation loan, cancelled, or in repayment. While some of those student loans had been previously deferred, or in forbearance, not a single student loan was ever in default.⁵⁶ Applicant attributed his problems with the student loans to a common practice among student loan servicers in routinely transferring such loans among various loan-servicing companies in an effort to make the system more efficient, but also creating confusion during the transition period.⁵⁷ Furthermore, I have compared each of the SOR allegations with the data reflected in the NSLDS documentation, and I am unable to find one loan that can be identified as in default, past due or charged off, as alleged in the SOR or as listed in the previously specified credit reports. They should no longer be reflected in Applicant's credit reports as alleged. These accounts have been resolved.

There is an apartment lease account in the amount of \$1,412 that was placed for collection (**SOR ¶ 1.j**).⁵⁸ Applicant was in his apartment one evening in 2007 when someone attempted to break into the apartment by kicking in the front door. When the perpetrator discovered Applicant was in the apartment, he fled. Applicant called the police, but the perpetrator could not be found. The door sustained \$500 damage. A police report was filed.⁵⁹ Applicant was concerned for his safety and reported the

⁵² GE 6, *supra* note 21, at 3; GE 5, *supra* note 21, at 3.

⁵³ AE R, *supra* note 47, at 2; AE X (Letter, dated January 31, 2013).

⁵⁴ AE W (Letter, dated February 1, 2013).

⁵⁵ AE B, *supra* note 23.

⁵⁶ AE E (NSLDS Loan Summary, undated); AE E (NSLDS Loans, undated); AE E (NSLDS Aid Summary, dated December 10, 2012); AE F (NSLDS Loan Detail, dated December 12-13, 2012). Applicant also explained that under a student loan forgiveness program, the remaining balance of his student loans will be forgiven after ten years if he continues to work for a "tribal organizational entity" such as his current employer. See GE 2 (Letter, dated September 23, 2012).

⁵⁷ GE 2 (Letter), *supra* note 48, with attached documentation.

⁵⁸ GE 7, *supra* note 13, at 16.

⁵⁹ Personal Subject Interview, *supra* note 4, at 4; Tr. at 101; AE G (Incident Report, dated May 26, 2007).

incident to the property manager. The manager told Applicant the lease could be voided if Applicant could furnish documentation of the incident. Applicant did so, and moved.⁶⁰ About one year later, Applicant received a bill for the broken lease. The old apartment manager had departed without leaving any record of the agreement, and the new property manager demanded payment.⁶¹ Applicant and the creditor subsequently agreed to a repayment settlement, and Applicant paid the creditor \$988.⁶² The creditor confirmed the debt was satisfied.⁶³ The account has been resolved.

Work Performance and Character References

Applicant's work performance and character have been described by a senior company management in extremely positive terms. The president, vice president-operations, facility security officer, office manager, and the senior program manager/direct supervisor, are very supportive of his application for a security clearance. Applicant has been described as possessing an "outstanding repertoire of technical and educational skills, strength of character," along with a "holistic approach to getting the job done." Applicant also possesses "the highest caliber of character and responsibility." Applicant is "a very up front and honest person, He is a dedicated and loyal worker." He is considered "a fine young man of integrity."⁶⁴

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."⁶⁵ 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."⁶⁶

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

⁶⁰ Tr. at 101.

⁶¹ Tr. at 101-102; Personal Subject Interview, *supra* note 4, at 4.

⁶² Tr. at 100; AE Y (Receipt, dated February 7, 2013).

⁶³ AE G (Letter, dated February 5, 2013).

⁶⁴ AE N (Character References, various dates).

⁶⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."⁶⁷ 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.⁶⁸

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."⁶⁹

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."⁷⁰ 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

⁶⁷ "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).

⁶⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶⁹ *Egan*, 484 U.S. at 531

⁷⁰ See Exec. Or. 10865 § 7.

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. Commencing in 2007-2008, Applicant started experiencing some financial difficulties, but over the next few years he was able to resolve them. However, there were other accounts that had disputed balances, or were disputed in their entirety, and Applicant was initially unable to have creditors or collection agents correct those disputed accounts. His credit reports reflected accounts that were in collection or charged off, and those entries are the basis of the SOR allegations. 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*.⁷¹ In addition, it is potentially mitigating under AG ¶ 20(e) when *the individual has*

⁷¹ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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) apply. The nature, frequency, and relative recency of Applicant's purported financial difficulties since 2007-2008 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." In an effort to address and resolve his accounts, Applicant contacted his creditors and collection agents regarding the alleged delinquent accounts, and sought validation and verification of those accounts. Those creditors that supplied the satisfactory validation or verification were paid. Those creditors that failed to furnish Applicant with the requested information, or whose accounts Applicant did not recognize, were disputed and eventually deleted from his credit report. The student loan accounts were incorrectly reported in his credit reports as past due, in collection, or charged off, but those reports were proven to be factually erroneous. Despite his contentions and protestations regarding his accounts, Applicant was issued an SOR, and his interim security clearance was suspended. He had a reasonable basis to dispute the legitimacy of some of the accounts or their respective balances, and provided documented proof to substantiate the basis of his disputes. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.⁷²

Commencing in 2007-2008, and continuing over the next few years, several events, largely beyond Applicant's control, occurred that caused him some actual, as well as alleged, financial problems: his ex-wife's actions in opening at least one account in his name without his knowledge or approval; his landlord's disavowal of an earlier release of Applicant from a lease; a creditor going out of business; the rather convoluted manner in which student loans were handled by loan servicing companies; the difficulty in dealing with various collection agents; the lengthy dispute process in having erroneous negative accounts deleted from his credit report; and the reporting of unverified negative information by credit reporting agencies.

There is a substantial risk when one accepts, at face value, the contents of a credit report without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and

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)).

⁷² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

“other sources,” and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual’s credit history can look worse than it really is. In this particular instance, the combined credit reports and the Equifax credit reports referred to numerous creditors for relatively few delinquent accounts. Because of abbreviated names and acronyms, many of those entries are garbled and redundant, and have inflated the financial concerns. Likewise, the absence of account numbers or the true identity of the original creditors in the SOR to link an allegation to a particular account makes it more difficult for an applicant to track down the various creditors or collection agents associated with those accounts. The Appeal Board has previously held that “adverse information from a credit report can normally meet the substantial evidence standard.” However, when the information in the credit report is refuted by documentation from the actual creditor, and the credit reporting company is furnished the correct information but still refuses or fails to correct its entries in a timely manner, one can conclude that the information in the credit report – actually a summary or secondary evidence pertaining to an account – is less accurate, trustworthy, or reliable than the other evidence of record.⁷³

As noted above, Applicant had addressed and resolved a number of accounts before his interim security clearance was suspended. There are clear indications that the problem, to the extent there was one, is being resolved or is under control. Applicant acted responsibly by addressing all of his accounts.⁷⁴

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

⁷³ In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

⁷⁴ “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.

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.⁷⁵

There is some evidence against mitigating Applicant's conduct. His relative inattention to some of his finances permitted a number of accounts, including some that were not his or those with inaccurate reporting, to become delinquent. As a result, some accounts were placed for collection or transferred.

The mitigating evidence under the whole-person concept is more substantial. Applicant contacted all of his creditors and collection agents, and sought validation and verification of those accounts. Those creditors that supplied the satisfactory validation or verification were paid. Those creditors that failed to furnish Applicant with the requested information, or whose accounts Applicant did not recognize, were disputed and eventually deleted from his credit report. The student loan accounts were incorrectly reported in his credit reports as past due, in collection, or charged off, but those reports were proven to be factually erroneous. 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:⁷⁶

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

⁷⁵ 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).

⁷⁶ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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. He resolved several accounts and successfully disputed other accounts. As for his student loans, the credit reports are inaccurate, and with documentation from the U.S. Department of Education, he has presented a more accurate picture of the status of his student loans. They are all non-defaulted, paid in full through consolidation loan, cancelled, or in repayment. 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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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