



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 12-10857

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

01/29/2014

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On September 14, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (1st SF 86).¹ On August 31, 2012, Applicant submitted another e-QIP version of a Security Clearance Application (2nd SF 86).² On February 27, 2013, Applicant submitted another e-QIP version of a Security Clearance Application (3rd SF 86).³ On March 29, 2011, the Department of Defense (DOD) issued

¹ Item 5 (1st SF 86, dated September 14, 2010).

² Item 12 (2nd SF 86, dated August 31, 2012).

³ Item 13 (3rd SF 86, February 27, 2013).

him a set of interrogatories. Applicant received the interrogatories on April 4, 2011, but it is unclear when he responded to the interrogatories as the response is undated and unsigned.⁴ The DOD issued a Statement of Reasons (SOR) to him on July 1, 2013, 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 all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), Guideline K (Handling Protected Information), and Guideline E (Personal Conduct), 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 July 10, 2013. In a sworn statement, dated July 22, 2013,⁵ Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on November 5, 2013, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on November 18, 2013, but, as of January 10, 2014, he had not submitted a response to the FORM. The case was assigned to me on January 14, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.h.) of the SOR. He denied the remaining factual allegations. 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 35-year-old employee of a defense contractor who, since June 1999, has been serving as a computer graphics illustrator. He has never served in the U.S. military.⁶ He was granted a secret security clearance in about December 2000, and a top secret security clearance on an unspecified date, but his eligibility for a security clearance was subsequently denied and his security clearance was revoked.⁷ Applicant claimed the revocation action occurred in May 2011 because of financial issues and his

⁴ Item 7 (Applicant's Answers to Interrogatories, undated).

⁵ Item 3 (Applicant's Answer to the SOR, dated July 22, 2013).

⁶ Item 13, *supra* note 5, at 11-12.

⁷ Item 9 (Security Violation Report, dated September 15, 2011).

father's criminal record.⁸ Applicant has attended a university on a part-time basis since June 2007, but has not yet received a degree. He was married in 2000, and he and his wife have one child, born in 2009.⁹

Financial Considerations

There was nothing unusual about Applicant's finances until the period between 2006 and 2009, when two events involving his father and father-in-law occurred. In June 2006, his father was charged with child molestation and sexual assault with a minor - a 5-year-old female foster child - and Applicant and his wife purportedly assisted him financially with his legal fees of between \$3,000 and \$6,000 during the entire criminal process. His father's attorney advised him that, in order to avoid imprisonment, he plead guilty to a lesser charge - indecency with a minor. Applicant's father did so and was eventually sentenced to seven years' probation and registration as a sex offender.¹⁰ During the same period, Applicant's father-in-law lost his job and had his leg amputated following several unsuccessful surgeries. Applicant and his wife purportedly assisted him financially by paying medical bills of between \$20,000 and \$30,000.¹¹ Because those expenditures left him with insufficient funds to maintain all of his accounts in a current status, several of them became delinquent. A variety of accounts were placed for collection or charged off.

Applicant has not received any financial counseling or debt consolidation counseling.¹² It appears that he had contacted only one or possibly two of his creditors or collection agents in an effort to resolve his delinquent accounts. Applicant indicated an intention to address his delinquent accounts once his "current commitments to [one specific SOR account] are finalized by the end of [2013]. I do not wish to be further overextended and will repay once finances allow."¹³ Despite being requested to do so, Applicant failed to submit any documentation to support his contentions that he had made any payments on behalf of his father or father-in-law, or to any of his own creditors, or that he had established repayment plans with any creditors.¹⁴

When he was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in October 2010, Applicant stated he had sufficient available funds

⁸ Item 13, *supra* note 5, at 26-27.

⁹ Item 13, *supra* note 5, at 13-14, 17.

¹⁰ Item 3, *supra* note 5, at 2; Item 11 (Letter, dated October 28, 2012); Item 7 (Personal Subject Interview, dated October 28, 2010), at 4.

¹¹ Item 11, *supra* note 10; Item 7, *supra* note 7, at 4.

¹² Item 7, *supra* note 10, at 4.

¹³ Item 3, *supra* note 5, at 1-2; Item 11.

¹⁴ Item 7, *supra* note 10, at 3-4. Applicant was informed that among the acceptable documentation would be recent statements or vouchers from creditors, credit consolidation indicating payment history, cancelled checks, and bank statements.

to meet his monthly financial obligations. He cited monthly bills, including mortgage, utilities, vehicle insurance, mobile phone, satellite, internet, and credit cards totaling \$1,599. However, he failed to state his net monthly income, or indicate if he had any money left over each month for discretionary spending or savings.¹⁵ In March 2011, when asked to complete a personal financial statement reflecting a net monthly income and monthly expenses, he failed to complete the blank form that had been furnished to him to do so.¹⁶

The SOR identified nine purportedly continuing delinquencies, totaling approximately \$15,590. There are delinquent credit cards, a past due mortgage, and various delinquent retail accounts with varying balances from \$30 to \$2,002 that were past due, placed for collection, charged off, or transferred or sold to debt purchasers (SOR ¶¶ 1.a. through 1.i.).¹⁷ In his Answer to the SOR, Applicant contended he had entered into a repayment arrangement with one creditor (SOR ¶ 1.f.) and settled one other account (SOR ¶ 1.i.), but he failed to submit any documentation to support his contentions. In the absence of any documentation to support his contentions, I conclude that none of the accounts have been resolved.

Handling Protected Information

During a security interview conducted by the Defense Security Service (DSS) in August 2011, it was reported that a classified document, with a secret classification, was printed by a third party on an unaccredited automated information system (AIS). The individual printing the classified document, identified as someone other than Applicant, “went through proper security channels and was not aware of any equipment violations,” and it was determined that the person printing the document had no culpability in the violation. The former facility security officer (FSO) was deemed solely responsible for the incident, but because she had already terminated her employment with the company, no disciplinary action could be taken.¹⁸ Applicant was not identified as having any culpability for the incident. It was determined that the reproduction incident was done in violation of DoD 5220.22-M, the *National Industrial Security Program (NISPOM) Operating Manual* (February 28, 2006), §§ 5-600, 5-601, 5-602, and 5-603.¹⁹ The former FSO indicated she thought the copier had been cleared for

¹⁵ Item 7, *supra* note 10, at 4.

¹⁶ Item 7, *supra* note 10, at 15.

¹⁷ Item 6 (Combined Experian, TransUnion, Equifax Credit Report, dated October 20, 2010); Item 14 (Combined Experian, TransUnion, Equifax Credit Report, dated March 1, 2013); Item 15 (Equifax Credit Report, dated May 14, 2013); Item 16 (Equifax Credit Report, dated October 30, 2013); Item 3, *supra* note 5, at 1-2.

¹⁸ Item 10 (Report of Investigation, undated), at 1-3.

¹⁹ NISPOM, § 5-600 states:

Contractors shall establish a control system to ensure that reproduction of classified material is held to the minimum consistent with contractual and operational requirements. Classified reproduction shall be accomplished by authorized personnel knowledgeable of the procedures. The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified documents is encouraged.

classified reproduction based on the Common Criteria Data erase kit. She believed a former DSS representative considered such action as a non-issue.²⁰

A DSS Industrial Security Specialist (ISS) followed up the investigation with her own investigation into the incident. The ISS concluded that since two cleared employees (the former FSO and Applicant, who was the Information System Security Manager (ISSM)) had access to the hard drives while they were in the copier, and both denied ever accessing the material, they were both deemed culpable.²¹ The ISS noted that as the ISSM, Applicant should have known that what he had done was contrary to established policy.²² Applicant denied culpability. He indicated that the former FSO requested classified copies be made on an unauthorized machine which both she and Applicant believed was appropriate because of the security kit that had previously been installed, and such action had never been deemed by DSS to be an issue. He also explained that he played no part in the incident, and was merely the ISSM when it occurred.²³

The file does not contain an Individual Culpability Report. The file is silent as to whether or not the violation involved a deliberate disregard of security requirements; or if it involved gross negligence in the handling of classified information; or if the violation involved was not deliberate in nature, but involved a pattern of negligence or carelessness.²⁴ Also missing was a statement that indicated the graduated scale of disciplinary actions that might have been taken against Applicant for the violation, and what administrative actions were actually taken against Applicant.²⁵ It does not appear that Applicant's security clearance was revoked because of this incident, because such revocation action occurred before the investigation was completed.

Personal Conduct

When Applicant completed his 1st SF 86 in September 2010, he indicated that his financial problems stemmed from assisting his family members, including his father, with medical and legal issues, without specifying what those legal issues were.²⁶ He discussed the issue with his FSO because his father had entered a plea of guilty only to avoid imprisonment, even though he was innocent of the charge. The FSO advised Applicant to respond "no" to the question of associating with known criminals, and to clear up the issue when interviewed by OPM.²⁷ During Applicant's OPM interview, the

²⁰ Item, 10, *supra* note 18, at Encl. A-1 (FSO Notes of former FSO Interview, dated August 11, 2011).

²¹ Item 9 (Security Violation Report, dated September 15, 2011), at 2.

²² Item 9, *supra* note 21, at 2.

²³ Item 3, *supra* note 5, at 2.

²⁴ See NISPOM, § 1-304.

²⁵ See NISPOM, § 1-304.

²⁶ Item 5, *supra* note 1, at 40.

²⁷ Item 3, *supra* note 5, at 2.

investigator asked him if he associated with anyone involved or suspected in criminal conduct or activities, and Applicant responded “no.”²⁸ He also added that his financial problems were, in part, due to his father’s sexual assault on a minor as well as his legal fees stemming from that criminal charge. When the investigator referred to Applicant’s initial denial to the question, Applicant said he was only following the guidance he had received from his FSO.²⁹ Applicant then volunteered all of the information regarding his father’s criminal situation.³⁰ Applicant denied any intent to lie or deceive anyone about his father’s activities.³¹

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.”³² 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.”³³

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.

²⁸ Item 7, *supra* note 10, at 2.

²⁹ Item 7, *supra* note 10, at 4.

³⁰ Item 7, *supra* note 10, at 4.

³¹ Item 3, *supra* note 5, at 2-3.

³² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”³⁴ 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.³⁵

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.”³⁶

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.”³⁷ 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:

³⁴ “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).

³⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁶ *Egan*, 484 U.S. at 531

³⁷ See Exec. Or. 10865 § 7.

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 between 2006 and 2009, Applicant had insufficient funds to make all of his monthly account payments. As a result, some accounts started to become delinquent, and were placed for collection or charged off. His delinquent debts remain largely unresolved. 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*.³⁸ In addition, AG ¶ 20(e) may apply if *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*.

³⁸ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that she 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)).

AG ¶¶ 20(a), 20(c), and 20(e) do not apply. The nature, frequency, and relative recency of Applicant's continuing financial difficulties since 2006 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." In light of his substantial period of continuing financial problems, the repeated promises to resolve his delinquent debts, and the inaction that followed those promises, it is unlikely that they will be resolved in the short term, and they are likely to continue. Applicant has never received counseling in money management, debt management, debt repayment, or budgeting. Furthermore, considering Applicant's general inaction following several promises, over several years, to resolve his accounts, the indications are that the financial problems have not been resolved and are not under control. He has not formally disputed any of alleged debts except to claim that he had paid one off. Under the circumstances, Applicant's actions do cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) and 20(d) might have applied, but despite being requested to do so, Applicant failed to submit any documentation to support his contentions that he had made any payments on behalf of his father or father-in-law, or to any of his own creditors, or that he had established repayment plans with any creditors. There is no documentary evidence to indicate that Applicant initiated a good-faith effort to repay his overdue creditors or otherwise resolve his debts. Applicant's statements regarding his future intent to resolve his debts, without corroborating documentary evidence supporting actual action to do so, are entitled to little weight. Those declarations of future intention to resolve his debts, after so much time where no positive efforts were taken, do not qualify as a "good-faith" effort. Under these circumstances it is unclear if Applicant acted responsibly.³⁹

Guideline K, Handling Protected Information

The security concern relating to the guideline for Handling Protected Information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 34(g) *any failure to comply with rules for the protection of classified or other sensitive information* is potentially disqualifying. Department Counsel has identified this as the sole condition of this particular guideline possibly pertinent to this case,⁴⁰ and I

³⁹ "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.

⁴⁰ FORM, at 6.

concur. Applicant purportedly violated four sections of the NISPOM, but with the exception of NISPOM § 5-600, there is little evidence that the other cited provisions (§§ 5-601, 5-602, and 5-603) apply in this instance. There is no evidence that the copied documents were marked top secret, or that classification markings were not placed on the classified material being reproduced. In addition, there is no evidence that the copied documents were not in furtherance of a prime contract; part of a bid, quotation, or proposal to a Federal agency or prospective subcontractor; or part of patent applications.⁴¹ Instead, the investigation concluded that the former FSO was deemed solely responsible for the incident, but because she had already terminated her employment with the company, no disciplinary action could be taken. Applicant was not identified as having any culpability for the incident.

A follow-up investigation by the ISS concluded that since two cleared employees (the former FSO and Applicant, who was the ISSM) had access to the hard drives while the documents were in the copier, and both denied ever accessing the material, they were both deemed culpable. There was no explanation as to how or why the conclusion regarding Applicant differed from the first investigation. Applicant denied culpability. When there are two possibilities, without more, it is impossible to properly determine if there is substantial evidence that one of the two probable “suspects” actually performed the prohibited act. In simply making her determination of Applicant’s culpability, based on the record submitted, in the absence of an Individual Culpability Report, a confession, or more evidence of culpability, the finding of the ISS is unsupported and unreasonable. I find Applicant’s statements to be consistent and credible. Because of the paucity of evidence contradicting him, and the fact that the Government evidence is internally inconsistent, I find that AG ¶ 34(g) is essentially refuted.

The guideline also includes examples of conditions that could mitigate security concerns arising from handling protected information. Under AG ¶ 35(a), the disqualifying condition may be mitigated where *so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.*

In this instance, I will assume the purported “security violation” occurred in August 2011—nearly two and one-half years before the date of this decision. However, as noted above, the file is silent as to whether or not the violation involved a deliberate disregard of security requirements; or if it involved gross negligence in the handling of classified information; or if the violation involved was not deliberate in nature, but involved a pattern of negligence or carelessness. Also missing was a statement that indicated the graduated scale of disciplinary actions that might have been taken against Applicant for the violation, and what administrative actions were actually taken against Applicant. It does not appear that Applicant’s security clearance was revoked because of this incident, because such revocation action occurred before the investigation was completed. Considering the totality of the evidence, I find that, assuming AG ¶ 34(g) is established, then AG ¶ 35(a) applies to mitigate the security concerns.

⁴¹ See NISPOM, §§ 5-601, 5-602, and 5-603.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(b), *deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative* is potentially disqualifying. Applicant's FSO advised him to respond "no" to the question of associating with known criminals, and to clear up the issue when interviewed by OPM. During that OPM interview, the investigator asked him if he associated with anyone involved or suspected in criminal conduct or activities, and Applicant responded "no." He added that his financial problems were, in part, due to his father's sexual assault on a minor as well as his legal fees stemming from that criminal charge. When the investigator referred to Applicant's initial denial to the question, Applicant said he was only following the guidance he had received from his FSO. Applicant then volunteered all of the information regarding his father's criminal situation. Applicant denied any intent to lie or deceive anyone about his father's activities. Because Applicant had initially acknowledged, at least in part, the issue involving his father, and denied intending to lie or provide false or misleading information, AG ¶ 16(b) has not been established.

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.⁴²

There is some evidence in favor of mitigating Applicant's conduct. He purportedly financially assisted his father and father-in-law with their respective legal and health issues, and has acknowledged responsibility for his delinquent debts and promised to resolve them.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has not received any financial counseling or debt consolidation counseling. It appears that he had contacted only one or possibly two of his creditors or collection agents in an effort to resolve his delinquent accounts. Despite being requested to do so, Applicant failed to submit any documentation to support his contentions that he had made any payments on behalf of his father or father-in-law, or to any of his own creditors, or that he had established repayment plans with any creditors. In October 2010, Applicant stated he had sufficient available funds to meet his monthly financial obligations. However, he failed to state his net monthly income, or indicate if he had any money left over each month for discretionary spending or savings. In March 2011, when asked to complete a personal financial statement reflecting a net monthly income and monthly expenses, he failed to complete the blank form that had been furnished to him to do so. Applicant's continuing inaction under the circumstances confronting him does cast doubt on his current reliability, trustworthiness, or good judgment. His reputation in the workplace is unknown.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁴³

⁴² 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).

⁴³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 the absence of a “meaningful track record” of debt reduction and elimination. There are delinquent debts, repeated promises of action to resolve those debts, and inaction by Applicant to do so. Overall, the evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline K:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraph 3.a:

For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge