



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



In the matter of:)
)
-----) ISCR Case No. 14-00284
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Clarissa T. Edwards, Esq.

03/13/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges two debts totaling \$41,198. Applicant has established payment plans which are in the process of resolving both debts. In October 2010, he was terminated from his employment as a federal police officer for excessive or unauthorized absences from work and for refusing to trim his beard sufficiently to enable him to wear a gas mask. Ability to wear a gas mask was a condition of his employment. He believed he was entitled to wear a beard because of his sincerely-held Muslim beliefs. He was sent home from work because of his beard. His violation of workplace rules is not recent; not having a beard is not a condition of his current employment in information technology; and additional violations of work place rules are unlikely to recur. Financial considerations and personal conduct concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On March 28, 2013, Applicant signed and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (GE 1) On April 25, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guidelines F (financial considerations) and E (personal conduct). (HE 2) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (HE 2)

On June 3, 2014, Applicant responded to the SOR. (HE 3) On October 3, 2014, Department Counsel was prepared to proceed. On October 9, 2014, DOHA assigned the case to me. On December 15, 2014, DOHA issued a notice of the hearing, setting the hearing for January 29, 2015. (HE 1) On January 28, 2015, the hearing was rescheduled for February 24, 2015. (HE 1A) The hearing was held as rescheduled. Department Counsel offered four exhibits into evidence, and they were admitted without objection. (Tr. 19-20; GE 1-4) Applicant offered 17 exhibits, which were admitted without objection. (Tr. 21-37, 81-84; AE A-Q) I received the transcript of the hearing on March 4, 2015. The record closed on March 5, 2015. (Tr. 97)

Findings of Fact¹

In Applicant's SOR response, he admitted owing the debt in SOR ¶ 1.a and the underlying conduct in SOR ¶ 2.a. He denied the remaining SOR allegations. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is 40 years old, and he has worked in information technology for a defense contractor since October 2012. (Tr. 38-39, 84) He does not intend to return to security-related duties. (Tr. 86) No one has expressed a concern to him about having a beard in his current employment in information technology. (Tr. 87)

In 2000, Applicant was married, and his four children are 2, 4, 11, and 12 years old. (Tr. 84) He served in the Army National Guard (ANG) from 1992 to 2000, and he received an honorable discharge. (Tr. 85) He was a specialist (E-4) when he left the ANG. (Tr. 85) His military occupational specialty (MOS) was communications signal support. (Tr. 85)

Financial Considerations

Applicant's credit reports and SOR allege two debts totaling \$41,198 as follows: (1) charged-off mortgage account for \$9,635 (SOR ¶ 1.a); and (2) student loan debts for \$31,563 (SOR ¶ 1.b). (Tr. 40) Applicant cosigned on the student loan for his cousin. (Tr. 41)

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant's has been paying \$115 monthly to address the \$9,635 debt. (Tr. 68; AE A) His January 2015 credit report indicates the current balance on his \$9,635 debt is \$5,805. (Tr. 42-43; AE A)

Applicant has been paying \$300 monthly since April 2012 to address the \$31,563 debt. (Tr. 44; AE B) His January 2015 credit report shows the current balance on the \$31,563 debt is \$17,985. (Tr. 42-43, 68-69; AE A)

In 2013, Applicant and his spouse's combined income, as reflected on their federal income tax return, was \$157,831. (Tr. 47; AE C) In 2014, their income was about \$175,000. (Tr. 49) They use a budget and have sufficient income to pay their expenses. (Tr. 47) They have about \$38,000 in their retirement accounts. (Tr. 50) They do not have any delinquent debts.

Personal Conduct

From 2005 to October 2010, Applicant worked as a federal civilian police officer at a DOD base. (Tr. 39) In 2007, he injured his back, and he was unable to work for about six weeks. (Tr. 51) In September 2008, Applicant received a letter of reprimand for bringing an unauthorized laptop computer to work; however, other employees brought their laptop computers and other electronic media to work without being disciplined. (Tr. 77-78) In March 2009, his supervisor told him to remove a prayer cap on three occasions. Applicant refused to do so and was sent home.

Applicant received doctor's permission slips to be on sick leave for the following dates: September 29, 2008 to October 10, 2008; August 10, 2009 to August 15, 2009; and March 29, 2010 to April 5, 2010. (Tr. 53-55; AE F-I) The permission slips did not describe his medical problem or explain why sick leave was necessary as opposed to light duty. (AE F-I) He provided nine leave requests. (AE Q) Some leave requests were approved, and some were denied. (AE Q)

In March 2009, he received a letter of caution for taking excessive leave, and he was advised that he was required to contact his supervisor before taking any future leave. (AE J) He was charged for leave without pay (LWOP) for the following dates: 8 hours on November 4, 2008; 1.75 hours on January 6, 2009; and 7.25 hours on January 11, 2009. (AE J) He was charged eight hours for being absent without leave (AWOL) on January 20, 2009, and on January 27, 2009. (AE J) On March 6, 2009, his sick leave balance was negative 100 hours. (AE J) Applicant said that for some of the dates he was authorized to be away from work. (Tr. 76) The March 2009 letter of caution indicated it would be maintained in his file for one year. (AE J) The letter explains that his "absences place a burden on management to make necessary adjustments to the workload necessitated" by his absence. (AE J)

On March 19, 2009, Applicant filed an Equal Employment Opportunity (EEO) complaint alleging religious discrimination. (Tr. 57; AE L) Applicant is a Muslim; he wore a prayer cap to work for religious reasons; and management told him to go home even

though he was ready, willing, and able to work. (Tr. 58) He was forced to take leave. (Tr. 58)

On May 4, 2009, and September 21, 2009, Applicant's representatives wrote that management's proposed removal of Applicant for leave abuse was illegal because sick leave is an entitlement; management forced Applicant to use sick leave (when he could have been at work performing light duty); management was not entitled to specific "protected" medical information from the physician before approving a sick leave request; management denied some of Applicant's leave requests without providing reasons for those denials, and then designated the time as AWOL; and progressive disciplinary actions had not been taken. (Tr. 60-63, 79-80; AE M, O) Management mitigated the removal to two-weeks of suspension from work without pay. (Tr. 60-61)

Applicant requested religious accommodation for his beard, but not for wearing his prayer cap at work. (Tr. 59) On July 31, 2009, a religious organization wrote management on Applicant's behalf and explained the religious significance of his beard and noted that under Title VII of the Civil Rights Act of 1964, employers cannot discriminate against employees based on their religious beliefs. (AE P)

In August 2009, he received a letter of requirement indicating his negative sick leave balance was 60 hours; he was required to contact his supervisors about absences from work; and his requests for sick leave lacked sufficient information to permit management to decide whether sick leave was warranted. (AE K) Applicant wanted to be placed on light duty; however, management required him to take sick leave. (Tr. 58)

On November 17, 2009, management at his installation advised Applicant that his request to wear a beard was denied because of the requirement as a condition of employment that he be able to wear a gas mask, and a gas mask will not properly seal and be effective for someone who has a beard. (Tr. 59; AE N)² Applicant admitted that he refused to shave. (Tr. 64; AE L) Applicant contended: the requirement to be able to wear a gas mask was not enforced for the previous four years even though he had a beard; the federal police at his installation were not tested for gas masks; and gas masks were not issued. (Tr. 76-76)

In October 2010, Applicant was terminated from his employment for failing to provide proper documentation for taking sick leave and for failure to shave his beard.

² Management's memorandum cited several Department of Defense and Navy publications. Current versions of those publications discuss safety, training, and medical requirements for use of gas masks; however, they do not discuss religious accommodations. Department of Defense (DOD) Instruction 2000.16 (Oct. 2, 2006), Incorporating through Change 2, (December 8, 2006), *DoD Antiterrorism (AT) Standards*; OPNAVINST 5100.23G CH-1, (July 21, 2011), *Navy Safety and Occupational Health Program Manual*; OPNAVINST 5530.14E CH-2 (September 23, 2014), *Navy Physical Security and Law Enforcement Program*. OPNAVINST 5100.23G, subsection 1503(e) provides: e. Per reference 15-3, "The employer shall not permit respirators with tight-fitting facepieces [of gas masks] to be worn by employees who have: (1) Facial hair that comes between the sealing surface of the facepiece and the face or that interferes with valve function; or (2) Any condition that interferes with the face-to-facepiece seal or valve function." Applicant's federal civilian police officer job description, as a first responder in the event of an emergency, requires that he be able to wear a gas mask. (AE L)

(Tr. 64) Applicant is in settlement negotiations on his EEOC complaint, which centers on management's failure to accommodate his religious belief that he should be entitled to have a beard. (Tr. 65) See note 5, *infra*.

Character Evidence

Applicant provided 10 statements from coworkers, friends, and supervisors, who have known him for periods ranging from a few months to ten years. (AE E) The letters laud his initiative, conscientiousness, intelligence, excellent written and verbal skills, professionalism, knowledge, diligence, dependability, dedication, trustworthiness, and contributions to mission accomplishment. (AE E) Their statements support reinstatement of his security clearance. (AE E) A major, who worked at the installation where Applicant was a federal police officer and supervised him, described him as an asset to any employer and positively depicted his organization, communication skills, and effectiveness. (AE E)

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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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." See Exec. Or. 10865 § 7. See *also* Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." 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.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, SOR response, and hearing record. Applicant's SOR alleges two debts totaling \$41,198. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;³ and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

³The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013). The SOR contains two debts, and Applicant has established payment plans addressing each debt. He reduced the two debts from a total of \$41,198 to \$23,790 by making \$415 monthly payments for several years. Both debts are in current status.

AG ¶¶ 20(a) to 20(d) apply. Applicant admitted responsibility for and took reasonable actions to resolve his SOR debts. There are clear indications the problem is being resolved and is under control. His efforts are sufficient to fully mitigate financial considerations security concerns.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment,

untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of: . . . (3) a pattern of dishonesty or rule violations.

When Applicant was a federal police officer, he brought an unauthorized laptop to work; he failed to comply with his supervisor's request for additional information to support his sick leave requests; and he failed to comply with his supervisor's directive that he needed to shave his beard. Assuming there is no possible accommodation for wearing a gas mask and having a beard (such as modifying his gas mask), his supervisor's requests are supported by federal law and were not illegal or improper requirements.⁴ His supervisor explained to Applicant that he needed to shave his beard so that he could wear a gas mask. His supervisor provided the references to ensure Applicant understood the requirement for him to be able to wear a gas mask.⁵ When

⁴ See 5 CFR § 630.405(b) ("An employee must provide administratively acceptable evidence or medical certification for a request for sick leave no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested evidence or medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the evidence or medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such documentation. An employee who does not provide the required evidence or medical certification within the specified time period is not entitled to sick leave."). See also *Pierre v. Napolitano*, 958 F. Supp. 2d 461, 479 (S.D. N.Y. 2013) (management entitled to request additional information about illness to support sick leave request); *New-Howard v. VA*, 590 Fed. Appx. 972, 2014 U.S. App. LEXIS 21402 (Fed. Cir. 2014)(same)(nonprecedential dec.).

⁵ The EEOC website provides two examples addressing wearing a beard and religious accommodation.

EXAMPLE 15, Facial Hair

Prakash, who works for CutX, a surgical instrument manufacturer, does not shave or trim his facial hair because of his Sikh religious observance. When he seeks a promotion to manage the division responsible for sterilizing instruments, his employer tells him that he must shave or trim his beard because it may contaminate the sterile field. All division employees are required to be clean shaven and wear a face mask. When Prakash explains that he does not trim his beard for religious reasons, the employer offers to allow Prakash to wear two face masks instead of trimming his beard. Prakash thinks that wearing two masks is unreasonable and files a Title VII charge. CutX will prevail because it offered a reasonable accommodation that would eliminate Prakash's religious conflict with the hygiene rule. EEOC Compliance Manual on Religious Discrimination (2008) at Example 46; *EEOC v. United Parcel Service*, 94 F.3d 314 (7th Cir. 1996) (genuine issue of material fact regarding whether the employer reasonably accommodated the employee's religious practice of wearing a beard precluded summary judgment for the employer).

EXAMPLE 16, Facial Hair

Raj, a Sikh, interviews for an office job. At the end of the interview, he receives a job offer but is told he will have to shave his beard because all office staff are required to be "clean shaven" to promote discipline. Raj advises the hiring manager that he wears his

Applicant declined to shave his beard; he was sent home; and his absence was designated as AWOL. He was first placed on LWOP for two weeks and then terminated. There is sufficient evidence of rule violations to establish AG ¶¶ 16(c) and 16(d), and consideration of mitigating conditions is required.

AG ¶ 17 provides two conditions that could mitigate security concerns in this case are as follows:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

In September 2008, Applicant received a letter of reprimand for bringing an unauthorized laptop computer to work. This rule violation did not recur. There is no evidence that his laptop was used to violate security.

Assuming management was not required or unable to accommodate Applicant's religious desire to have a beard, Applicant violated rules when he refused to shave. He failed to provide sufficient medical information for his supervisor to decide whether he needed sick leave. Applicant received legal advice from the base labor committee which supports his position that management's requirements were illegal. However, the lawyer's letter on behalf of the base labor committee failed to address contrary legal authority, and Applicant is not a lawyer.

Applicant had a good-faith belief that his supervisors violated his rights by insisting on additional medical information, and by requiring him to shave his beard to enable him to wear a gas mask to perform his police duties in the event of a gas attack. He openly and lawfully challenged the legality of his supervisor's orders through the EEO system. There is no evidence that he has violated employment rules since 2010. Assuming management complied with EEO requirements, his rule violations are not recent, and they occurred "under such unique circumstances" that they are "unlikely to recur" and do "not cast doubt on [his] reliability, trustworthiness, or good judgment." He no longer works as a federal police officer; his present employment in information technology can accommodate his desire to have a beard at work; and he is not required

beard unshorn because of his Sikh religious practice. Since no undue hardship is posed by allowing Raj to wear his beard, the employer must make an exception as an accommodation. *EEOC v. United Parcel Service*, Civil Action No. 08-cv-1806 (M.D. Pa. consent decree entered Feb. 2010) (settling Title VII claim of failure to accommodate package delivery employee whose religious practice of wearing long hair and beard necessitated exception to company's grooming code).

to be able to perform the strenuous physical duties of a police officer and excessive use of sick leave has not been a problem for him. His current employment has enabled him “to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.” AG ¶¶ 17(c) and 17(d) apply, and personal conduct concerns are mitigated.

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. I have incorporated my comments under Guideline F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 40 years old, and he has worked in information technology for a defense contractor since October 2012. He served in the ANG from 1992 to 2000; he received an honorable discharge; he was a specialist when he left the ANG; and his MOS was communications signal support. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for volunteering to support the U.S. Government as an employee of a contractor and for his ANG service. Applicant provided 10 statements from coworkers, friends, and supervisors. His character references laud his initiative, conscientiousness, intelligence, excellent written and verbal skills, professionalism, knowledge, diligence, dependability, dedication, trustworthiness, and contributions to mission accomplishment. There is every indication that he is loyal to the United States and his employer.

In September 2008, Applicant violated a rule when he brought an unauthorized laptop computer to work. From 2009 to 2010, Applicant violated rules when he failed to provide sufficient medical information for his supervisor to decide whether he needed sick leave. Assuming management was not required to accommodate his religious belief that he should have a beard, he violated a rule when he refused to shave because he was unable to safely wear a gas mask in the event of a gas attack.

Applicant received legal advice from the base labor committee which supports his position that the requirement to shave and to provide more specific information about his illness and prognosis was unlawful. Applicant had a good-faith belief that his supervisors violated his rights by insisting on additional medical information, and that he needed to shave his beard to enable him to wear a gas mask to perform his duties. He openly and lawfully challenged the legality of his supervisor's orders through the EEO system. Applicant has not violated any work-place rules since October 2010. His rule violations are not recent. Since October 2012, he has worked in information technology for a defense contractor without incident. All of his problems as a federal police officer relate to performing physical requirements and his beard and wearing his prayer cap. Those unique circumstances are unlikely to recur in the information technology environment.

Applicant is credited with bringing both of his delinquent debts to current status. His credit reports establish that he has kept numerous debts in current status or resolved them through payment. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

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

Applicant understands what he needs to do to establish and maintain his financial responsibility. His efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident he will continue to pay his debts and maintain his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations and personal conduct concerns are mitigated.

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
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a to 2.f:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge