



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00485

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

11/13/2014

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 August 23, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On March 21, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility – Division A (CAF) 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 all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

¹ GE 1 ((SF 86), dated August 23, 2013).

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 May 14, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 20, 2014. The case was assigned to me on August 21, 2014. A Notice of Hearing was issued on August 27, 2014, and I convened the hearing, as scheduled, on September 17, 2014.

During the hearing, four Government exhibits (GE 1 through GE 4) and seven Applicant exhibits (AE A through AE G) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on September 30, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted three additional documents, which were marked as exhibits AE H through AE J and admitted into evidence without objection. The record closed on September 30, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.c.). Applicant's answers and explanations 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 39-year-old employee of a defense contractor, for which, since February 2013, he has served as a network consultant engineer.² Applicant graduated from high school in 1993.³ In 1998, he was awarded a bachelor's degree in electrical engineering.⁴ Applicant was married in September 2006.⁵ He and his wife have a daughter born in 2008 and a son born in 2011.⁶ Applicant has never served with the U.S. military.⁷ He has never held a security clearance.⁸

² GE 1, *supra* note 1, at 13-14.

³ GE 1, *supra* note 1, at 12-13.

⁴ Tr. at 36; GE 1, *supra* note 1, at 13.

⁵ GE 1, *supra* note 1, at 22.

⁶ GE 1, *supra* note 1, at 27-28.

⁷ GE 1, *supra* note 1, at 19.

⁸ GE 1, *supra* note 1, at 40-41.

Financial Considerations

In July 2006, Applicant purchased a residence financed by a home loan of \$445,640 and a private loan of \$70,000 from his wife's aunt. In December 2006, he acquired a home equity loan for \$130,000, in part to repay the aunt and in part to pay down the first mortgage and to purchase appliances and furniture for the house.⁹ There was nothing unusual about Applicant's finances until 2009, and he routinely made his monthly payments for both loans until that time.¹⁰

(SOR ¶ 1.b.): In January 2009, Applicant invested in an existing laundromat with an unemployed former business colleague as his business partner.¹¹ He used some of his savings as well as an open credit line of approximately \$50,000 for the purchase of equipment and supplies. Applicant was listed as the account's primary user and his partner was the secondary user.¹² Although the laundromat was not making any profit, it remained open until January 2011 when it was sold "pretty much for nothing."¹³ Since Applicant's business partner was unable to pay his half of their joint business debt, Applicant became responsible for the entire balance. He continued making substantial monthly payments (\$1,180 in July 2011 and August 2011) on the account until the balance diminished to \$46,520.65.¹⁴ Applicant closed the account, and on September 30, 2011, that amount was charged off.¹⁵ The charged-off balance was transferred to another account in October 2011, and Applicant continued to make routine monthly payments of between \$400 and \$500 each month.¹⁶ On April 1, 2014, Applicant and the creditor agreed to a formal repayment plan under which Applicant is to continue making monthly payments of \$400 until the account is paid in full.¹⁷ As of April 10, 2014, the remaining account balance was \$34,070.65.¹⁸ By August 25, 2014, the remaining balance was reduced to \$32,070.65.¹⁹ The account is in the process of being resolved.

In February 2009, Applicant's employer laid off Applicant and the remaining members of his team, eventually closing the entire department in which they worked, for

⁹ AE G (Letter, dated September 3, 2014); Tr. at 45-49, 56.

¹⁰ Tr. at 49.

¹¹ Tr. at 44-45.

¹² GE 2 (Personal Subject Interview, dated September 12, 2013), at 3-4.

¹³ Tr. at 64.

¹⁴ AE F (Account Statement, dated September 7, 2011).

¹⁵ AE F (Account Statement, dated October 6, 2011); GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 5, 2013); Tr. at 67.

¹⁶ AE F (Account Statements, various dates); AE B (Account Statements, various dates).

¹⁷ AE B (Letters, dated April 1, 2014); Tr. at 65.

¹⁸ AE B (Letter, dated April 10, 2014).

¹⁹ AE F (Account Statement, dated August 29, 2014).

financial reasons.²⁰ He remained unemployed until July 2009.²¹ As a result of the layoff, in April 2009 he started falling behind in his monthly home loan payments.²² During his layoff, Applicant called both his primary mortgage lender and his home equity lender in an attempt to work on a resolution for his financial problems. The home equity lender advised him to focus on the primary mortgage.²³ Applicant eventually stopped paying the home equity account.²⁴

(SOR ¶ 1.c.): When Applicant obtained his new job in July 2009, that job paid him 20 percent less than the one he had previously lost, leaving him that much less to make his monthly payments.²⁵ The primary mortgage lender initially refused to enter into a current mortgage modification program or to accept any monthly payments until Applicant first paid off his past-due balance.²⁶ A new trial mortgage modification program was established in 2010, and Applicant was permitted to enroll in it for six months. Under that program, Applicant's past-due balance was rolled back to the end of his loan. After completing the trial program, Applicant was informed by the mortgage lender that his interest rate would be increased substantially to a rate he could not afford.²⁷ In 2013, foreclosure proceedings were commenced.²⁸ At about the same time, the primary mortgage lender informed Applicant about a new mortgage modification program for which he appeared to be qualified, and after an exhaustive period of verifications and interviews, Applicant was entered into that program.²⁹ The foreclosure process ceased and Applicant was given new terms on his mortgage. Effective February 2014, he has been making monthly payments of \$2,706.34.³⁰ Applicant's primary mortgage account is back to a current status.

(SOR ¶ 1.a.): In October 2012, the bank that extended Applicant his home equity loan cancelled the \$124,933.89 debt and issued him a Form 1099-C, Cancellation of Debt.³¹ Normally, debt forgiveness results in taxable income. However, under the Mortgage Forgiveness Debt Relief Act of 2007, during tax years 2007 through 2012, as

²⁰ GE 2, *supra* note 12, at 2; Tr. at 40-41.

²¹ GE 2, *supra* note 12, at 2

²² Tr. at 50, 53.

²³ Tr. at 54.

²⁴ Tr. at 55.

²⁵ Tr. at 50-51.

²⁶ Tr. at 56.

²⁷ Tr. at 57-58.

²⁸ GE 4, *supra* note 15, at 21.

²⁹ Tr. at 59.

³⁰ AE G (Loan Statement, dated August 17, 2014); Tr. at 60-61.

³¹ AE A (2012 Form 1099-C, dated October 30, 2012).

a homeowner, Applicant was able to exclude up to \$2 million of debt forgiven on his principal residence.³² The account has been resolved.

During the period April 2009 to July 2009, Applicant met with financial representatives of both his primary mortgage lender and his home equity lender. He revealed all of his assets and liabilities and his financial picture underwent a detailed analysis. He was also referred to a third-party non-profit financial counselor for additional guidance in budgeting.³³ In September 2014, Applicant prepared a family monthly budget. A review of that document reveals a total monthly income of \$7,480, including salary and rental income from two properties. With routine monthly living expenses and educational savings of \$6,727, he estimated that he has approximately \$1,028 available for discretionary spending or savings.³⁴ Applicant has two rental properties, about \$12,000 in savings, \$3,000 in checking, \$50,000 in his 401(k), and \$40,000 in restricted stock options.³⁵ All of Applicant's newer accounts are current.³⁶ Applicant's FICO® credit score is 700, reflecting a "good" borrower.³⁷ It is Applicant's goal to address each of his accounts in turn to pay them off.³⁸

Work Performance and Character References

An individual who has known Applicant for over 23 years has characterized Applicant as an upstanding citizen and proactive member of the community, as well as a highly professional and trustworthy person.³⁹ A co-worker, who has known Applicant since 2006, noted that Applicant is a trusted friend and co-worker, and he has "demonstrated a strong work ethic, balanced perspective, and measured responses to challenging situations."⁴⁰ Applicant is active in his community church with child-related programs.⁴¹

³² AE E (2012 Canceled Debt Worksheet, undated); Tr. at 62; Applicant's Answer to the SOR, dated May 14, 2014, at 1.

³³ Tr. at 78-80.

³⁴ AE J (Family Monthly Budget, undated).

³⁵ Tr. at 70-75.

³⁶ GE 2, *supra* note 12, at 5.

³⁷ AE D (FICO® Credit Score, dated September 7, 2014).

³⁸ Tr. at 87.

³⁹ AE I (Character Reference, undated).

⁴⁰ AE H (Character Reference, dated September 18, 2014).

⁴¹ Tr. at 80-81.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁴² As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁴³

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁴⁴ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁵

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This

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

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

⁴⁴ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁴⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”⁴⁶

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴⁷ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure 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. Applicant’s most significant financial problems arose in 2009 and continued for several years thereafter. He was unable to continue making some of his routine monthly payments, and one credit card, one mortgage, and one home equity loan became delinquent and were either placed for collection or charged off. The mortgage went into a foreclosure status. AG ¶¶ 19(a) and 19(c) apply.

⁴⁶ *Egan*, 484 U.S. at 531.

⁴⁷ See Exec. Or. 10865 § 7.

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*.⁴⁸

AG ¶¶ 20(b), 20(c), and 20(d) apply. AG ¶ 20(a) partially applies. The nature, frequency, and relative recency of Applicant's continuing financial difficulties, occurring in 2009, make it difficult to conclude that they occurred "so long ago" or were "so infrequent" as to make them unlikely to recur. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, his financial problems were largely beyond Applicant's control. In February 2009, Applicant's employer laid off Applicant and the remaining members of his team, eventually closing the entire department in which they worked, for financial reasons. He remained unemployed until July 2009. When he was able to obtain new employment, the salary was 20 percent less than his old salary. As a result of that lay-off and reduced salary, he was unable to continue making routine monthly payments on some of his accounts. Exacerbating his financial difficulties, Applicant's investment business, the laundromat, was not making a profit, and when it was sold, Applicant's business partner was unable to be responsible for paying his share of their business debt.

Applicant acted responsibly by addressing his three delinquent accounts and working with his creditors in an effort to set up repayment arrangements or otherwise resolve them.⁴⁹ His overall strategy has been successful, and he has resolved two of

⁴⁸ 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 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)).

⁴⁹ "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

the accounts and is in the process of resolving the remaining account. The residence was withdrawn from foreclosure status, and the account is now current. Applicant worked with financial counselors to assist him in obtaining the home mortgage modification and had his financial status analyzed. He has funds available each month for discretionary spending or savings. All of Applicant's newer accounts are current. There are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.⁵⁰

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.⁵¹

There is little evidence against mitigating Applicant's conduct. His handling of his finances permitted three accounts to become delinquent. As a result, those accounts became delinquent and were either placed for collection or charged off. His mortgage eventually entered a foreclosure status.

The mitigating evidence under the whole-person concept is much more substantial. He has an outstanding reputation in the workplace. Applicant's financial problems were not caused by frivolous or irresponsible spending, and he did not spend

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.

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

⁵¹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

beyond his means. Rather, Applicant's problems were largely beyond his control. In February 2009, Applicant's employer laid Applicant off and eventually closed the entire department in which he worked, for financial reasons. Applicant remained unemployed until July 2009, and when he obtained new employment, the salary was 20 percent less than his old salary. The lay-off and the reduced salary made it difficult for him to continue making routine monthly payments on some of his accounts. In addition, when Applicant's unsuccessful investment business was sold, Applicant took responsibility for paying both his and his business partner's portions of their joint business debt.

Applicant did not ignore his debts. Instead, he addressed them. Applicant eventually saw his mortgage withdrawn from foreclosure status, and with an approved loan modification, the mortgage is once again current. He set up repayment arrangements on the delinquent business account. As a result of the Mortgage Forgiveness Debt Relief Act of 2007, Applicant's delinquent home equity loan was forgiven, and he no longer has any legal responsibility for it. Accordingly, Applicant has resolved, or is in the process of resolving, all three of his accounts. There are clear indications that Applicant's financial problems are under control. His actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.

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

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts. 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

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

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

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