



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-00537  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esquire, Department Counsel  
For Applicant: *Pro se*

10/21/2014

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant has 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 August 29, 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).<sup>1</sup> On April 7, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility - Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to 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

<sup>1</sup> Item 6 ((SF 86), dated August 29, 2013).

September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make a preliminary affirmative finding under the Directive 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 April 22, 2014. In a statement, notarized April 22, 2014, Applicant responded to the SOR allegations.<sup>2</sup> By separate e-mail, dated June 24, 2014, he elected to have his case decided on the written record in lieu of a hearing.<sup>3</sup> A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on July 28, 2014, 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. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on August 6, 2014. A response was due on September 5, 2014, but as of October 7, 2014, he had not submitted any response. The case was assigned to me on October 8, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. through 1.d.). 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. He has been serving as a cable fabricator with his current employer since December 2012.<sup>4</sup> He was previously unemployed on two lengthy occasions: from January 2006 until September 2006, and from March 2012 until December 2012.<sup>5</sup> Applicant has also been an enlisted member of the Air National Guard since March 1997.<sup>6</sup> A June 1996 high school graduate, Applicant attended a local community college for one year, but did not obtain a degree.<sup>7</sup> He was granted a secret security clearance in 1998.<sup>8</sup> He has never been married.<sup>9</sup>

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<sup>2</sup> Item 4 (Applicant's Answer to the SOR, dated April 22, 2014).

<sup>3</sup> Item 5 (Applicant's Supplemental Answer to the SOR, dated June 24, 2014).

<sup>4</sup> Item 6, *supra* note 1, at 10.

<sup>5</sup> Item 6, *supra* note 1, at 11-13.

<sup>6</sup> Item 7 (Personal Subject Interview, dated October 1, 2013), at 1; Item 6, *supra* note 1, at 11, 14-16.

<sup>7</sup> Item 6, *supra* note 1, at 9.

<sup>8</sup> Item 6, *supra* note 1, at 25-26.

<sup>9</sup> Item 6, *supra* note 1, at 18.

## Financial Considerations

Applicant acknowledged that when he incurred his debts, he foolishly spent all of his money on a “very high-maintenance” girlfriend.<sup>10</sup> It is unclear when Applicant’s finances became so unmanageable that he was unable to maintain his monthly payments, resulting in his accounts becoming delinquent in 2007 and 2008. Applicant acknowledged to the investigator from the U.S. Office of Personnel Management (OPM) that he “did not experience any financial hardships” due to his periods of unemployment because he resided with his parents and was financially supported by \$500 per week in unemployment compensation.<sup>11</sup> He also explained that because of insufficient funds due to the absence of steady employment, he was unable to pay off his accounts.<sup>12</sup> At some point, because of insufficient money to continue making his monthly payments, some of his accounts became delinquent, were placed for collection, or were charged off. His wages were garnished to reduce some outstanding balances.<sup>13</sup> Applicant contemplated filing for bankruptcy, but has not done so.<sup>14</sup> In October 2013, he indicated an intention to contact each creditor to set up repayment plans in order to settle the debts as soon as possible.<sup>15</sup> There is no evidence that he has ever done so.

The SOR identified four purportedly delinquent debts totaling \$35,894 that had been placed for collection or charged off, as generally reflected by a September 2013 credit report<sup>16</sup> and a June 2014 credit report.<sup>17</sup> None of the accounts listed in the SOR reflect account numbers. Those debts and their respective current status are described below.

(SOR ¶ 1.a.): There is an unsecured credit union loan account with a high credit of \$21,759 and an unpaid balance of \$20,338 that was placed for collection and eventually charged off.<sup>18</sup> Applicant contends the account was placed for collection and after the matter was brought to a civil court, his wages were garnished.<sup>19</sup> He has not submitted any documentation to support his contention that any payments were made

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<sup>10</sup> Item 7, *supra* note 6, at 5.

<sup>11</sup> Item 7, *supra* note 6, at 1-2; Item 6, *supra* note 1, at 7-8.

<sup>12</sup> Item 7, *supra* note 6, at 3-4.

<sup>13</sup> Item 7, *supra* note 6, at 3-4.

<sup>14</sup> Item 7, *supra* note 6, at 3-4.

<sup>15</sup> Item 7, *supra* note 6, at 3-4.

<sup>16</sup> Item 9 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 25, 2013).

<sup>17</sup> Item 8 (Equifax Credit Report, dated June 4, 2014).

<sup>18</sup> Item 9, *supra* note 16, at 7, 11; Item 6, *supra* note 17, at 2.

<sup>19</sup> Item 7, *supra* note 6, at 3.

through garnishment. He has not submitted any documentation reflecting any action or activity to contact the creditor or collection agent in an effort to set up repayment arrangements. The account has not been resolved.

(SOR ¶ 1.b.): There is a bank credit card account with a past-due balance of \$3,159 and an unpaid balance of \$3,418 that was placed for collection and eventually charged off.<sup>20</sup> Applicant contends the account was placed for collection and his wages were garnished.<sup>21</sup> He has not submitted any documentation to support his contention that any payments were made through garnishment. He has not submitted any documentation reflecting any action or activity to contact the creditor or collection agent in an effort to set up repayment arrangements. The account has not been resolved.

(SOR ¶ 1.c.): There is a bank credit card account with a past-due balance of \$8,363 and an unpaid balance of \$9,938 that was placed for collection and eventually charged off.<sup>22</sup> Applicant contends the account was placed for collection and his wages were garnished.<sup>23</sup> He has not submitted any documentation to support his contention that any payments were made through garnishment. He has not submitted any documentation reflecting any action or activity to contact the creditor or collection agent in an effort to set up repayment arrangements. The account has not been resolved.

(SOR ¶ 1.d.): There is a credit union personal loan account with a past-due balance of \$2,200 that was placed for collection and eventually charged off.<sup>24</sup> Applicant contends the account was placed for collection and after the matter was brought to a civil court, his wages were garnished.<sup>25</sup> He has not submitted any documentation to support his contention that any payments were made through garnishment. He has not submitted any documentation reflecting any action or activity to contact the creditor or collection agent in an effort to set up repayment arrangements. The account has not been resolved.

There is no evidence to indicate that Applicant ever received financial counseling. It is not known what Applicant's financial resources may be because he did not submit a personal financial statement to indicate his net monthly income, his monthly rent, debt, or household expenses, or whether or not he has any funds remaining at the end of each month for discretionary use or savings. Applicant contends he has no other delinquent accounts.<sup>26</sup>

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<sup>20</sup> Item 9, *supra* note 16, at 10; Item 6, *supra* note 17, at 1.

<sup>21</sup> Item 7, *supra* note 6, at 4.

<sup>22</sup> Item 9, *supra* note 16, at 10; Item 6, *supra* note 17, at 1.

<sup>23</sup> Item 7, *supra* note 6, at 4.

<sup>24</sup> Item 9, *supra* note 16, at 7; Item 6, *supra* note 17, at 2.

<sup>25</sup> Item 7, *supra* note 6, at 3.

<sup>26</sup> Item 7, *supra* note 6, at 5.

## 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.”<sup>27</sup> 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.”<sup>28</sup>

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.”<sup>29</sup> 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.<sup>30</sup>

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

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<sup>27</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>28</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

<sup>29</sup> “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 (4<sup>th</sup> Cir. 1994).

<sup>30</sup> *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.”<sup>31</sup>

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.”<sup>32</sup> 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 has had a long-standing problem with his finances which generally started in 2007 or 2008. He found himself with insufficient funds to continue making his routine monthly payments and various accounts became delinquent, and were placed for collection, or charged off. AG ¶¶ 19(a) and 19(c) apply.

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<sup>31</sup> *Egan*, 484 U.S. at 531

<sup>32</sup> 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.*<sup>33</sup>

AG ¶ 20(b) minimally applies. AG ¶¶ 20(a), 20(c), and 20(d) do not apply. The nature, frequency, and recency of Applicant's continuing financial difficulties since about 2007 or 2008 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant was previously unemployed from January 2006 until September 2006, and from March 2012 until December 2012. However, as he noted, he did not experience any financial hardships due to his periods of unemployment because he resided with his parents and was financially supported by \$500 per week in unemployment compensation. To the contrary, as he also noted, Applicant's financial problems were in some measure caused by irresponsible spending when he foolishly spent all of his money on a very high-maintenance girlfriend. There is also some question as to why Applicant incurred the original loans and balances as he apparently had few expressed expenses while residing with his parents.

Applicant's four accounts became delinquent and were first placed for collection and then charged off. Although Applicant was gainfully employed from September 2006 until March 2012, and by his current employer since December 2012, it remains unclear as to what actions he has yet taken to address any of his delinquent accounts. He acknowledged some garnishments, but offered no evidence of any voluntary payments. He offered no evidence of a good faith effort to resolve his debts and has essentially ignored them. There is no evidence to indicate that Applicant ever received financial

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<sup>33</sup> 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 [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)).

counseling. It is not known what Applicant's financial resources may be, or if he has any funds remaining at the end of each month for discretionary use or savings. There is no evidence to reflect that Applicant's financial problems are close to being under control. Applicant has not acted responsibly in failing to address his delinquent accounts and by making little, if any, efforts of working with his creditors.<sup>34</sup> Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, or good judgment.<sup>35</sup>

### **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.<sup>36</sup>

There is some evidence in favor of mitigating Applicant's conduct. He has honorably served with the Air National Guard. He was unemployed from January 2006 until September 2006, and from March 2012 until December 2012. He has repeatedly declared his intention of resolving his delinquent accounts.

The disqualifying evidence under the whole-person concept is more substantial. Applicant's financial problems were in some measure caused by irresponsible spending

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<sup>34</sup> "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.

<sup>35</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>36</sup> 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).



when he foolishly spent all of his money on a very high-maintenance girlfriend. Once he was gainfully employed, he made little, if any, efforts to pay his creditors, generally ignoring them and allowing the system to obtain funds from him through garnishment. His long-standing failure to repay creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance. It is not known what Applicant's financial resources may be, or if he has any funds remaining at the end of each month for discretionary use or savings. Thus, there are no indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, or good judgment. Considering the relative absence of debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>37</sup>

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 an essentially negative track record of debt reduction and elimination efforts, generally ignoring them. 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 her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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<sup>37</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

## 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

## 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.

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ROBERT ROBINSON GALES  
Administrative Judge