



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-01678

Appearances

For Government: John Bayard Glendon, Esquire, Deputy Chief Department Counsel
For Applicant: *Pro se*

05/19/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant has 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 6, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On May 30, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (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 September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

¹ Item 3 (e-QIP, dated August 6, 2013).

Considerations), and detailed reasons why the DOD CAF was unable to make an 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 June 24, 2014. In an undated (and not notarized) statement, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.² A complete copy of the Government's file of relevant material (FORM) was initially provided to Applicant on March 3, 2015, and resent on or after April 13, 2015,³ 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 April 23, 2015. A response was due by May 23, 2015. On an unspecified date before April 28, 2015, Applicant submitted his response with attachments.⁴ The case was assigned to me on May 15, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted most of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. through 1.d., 1.f., and 1.g.). 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 32-year-old employee of a defense contractor. He has been serving as a trainer in an overseas location with his current employer since February 2011.⁵ He was previously employed by other federal contractors in overseas locations since June 2009.⁶ A 2001 high school graduate, Applicant attended university courses for several months in 2012, but he did not obtain a degree.⁷ He enlisted in the U.S. Army in May 2003 and served on active duty, primarily overseas, until June 2009, when he was honorably discharged. At the time of his discharge he held the rank of staff

² Item 1 (Applicant's Answer to the SOR, undated).

³ The initial FORM was received by Applicant's facility security officer (FSO) on March 9, 2015, and was forwarded to Applicant at his overseas duty location on March 10, 2015. As of April 7, 2015, Applicant had still not received the FORM. On April 7, 2015, the FSO notified the Defense Office of Hearings and Appeals (DOHA) of the situation and requested that another copy of the FORM be sent to the FSO. The new copy was furnished on or after April 13, 2015. See e-mails, dated April 7, 2015, and April 13, 2015, found in the case file.

⁴ Applicant's Response to the FORM was received by DOHA on April 28, 2015, as indicated by date-stamp on the reverse of the documents.

⁵ Item 3, *supra* note 1, at 12.

⁶ Item 3, *supra* note 1, at 13-16.

⁷ Item 3, *supra* note 1, at 10-11.

sergeant.⁸ Applicant was granted a secret security clearance in 2003.⁹ He was married the first time in October 2004, and divorced in September 2010; and married the second time in April 2011.¹⁰

Financial Considerations

There was nothing unusual about Applicant's finances until about 2010 when he was working in Afghanistan and his first wife took money out of his bank account and maximized a credit card account just prior to their divorce.¹¹ As a result of a combination of factors, including his first wife's actions, his divorce, his location in Afghanistan, and his current wife's unspecified medical issues, Applicant had insufficient money to maintain his monthly payments. As a result, various accounts became delinquent and were placed for collection, or charged off. After becoming aware of the delinquent status of some of his accounts, Applicant cashed out his 401(k) retirement account and contacted his creditors in an effort to resolve his delinquent accounts.¹²

The SOR identified seven delinquent debts that had been placed for collection or charged off, as reflected by a February 2015 credit report.¹³ Those seven debts total approximately \$28,661. Those allegations and their respective current status, according to the credit report, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.a.): There is a bank checking account, not listed in Applicant's 2015 credit report, that Applicant listed in his e-QIP as having an estimated balance of \$880,¹⁴ and the SOR alleged a balance of \$907. Applicant disputed the amount alleged in the SOR.¹⁵ Applicant had switched bank accounts, and a deposit was sent to another bank and not to the creditor in April 2011.¹⁶ He made a final payment of \$785.25 in July 2014, and as of July 14, 2014, the account was considered by the creditor as paid in full.¹⁷ The account has been resolved.

⁸ Item 3, *supra* note 1, at 17-20.

⁹ Item 3, *supra* note 1, at 37.

¹⁰ Item 3, *supra* note 1, at 22-24.

¹¹ Applicant's Response to the FORM, *supra* note 4.

¹² Item 1, *supra* note 2, at 2; Applicant's Response to the FORM, *supra* note 4.

¹³ Item 2 (Equifax Credit Report, dated February 12, 2015).

¹⁴ Item 3, *supra* note 1, at 41-42.

¹⁵ Item 1, *supra* note 2, at 1.

¹⁶ Item 3, *supra* note 1, at 42.

¹⁷ Account Notice, dated July 14, 2014, attached to Applicant's Response to the FORM.

(SOR ¶ 1.b.): There is a credit union automobile loan with a balance of \$13,009 that became delinquent in November 2010 and was eventually charged off.¹⁸ In his e-QIP, Applicant commented that he had switched jobs and without realizing it, the account became one month past due. Upon relocating to Afghanistan, he resumed his monthly payments.¹⁹ He made up the delinquency by paying \$1,500, but learned that the vehicle had already been repossessed in Korea. Neither Applicant nor the creditor was aware of the repossession until a representative of the credit union acknowledged the status of the vehicle eight months later.²⁰ Applicant contacted the creditor to set up a repayment plan and also disputed the account with the credit reporting agency, but he described the account as “a hard account to work with,” because the paperwork keeps being bounced from one person to another.²¹ There is no evidence that the vehicle was sold at auction or that Applicant was credited with any reduction in the balance due to the sale of the vehicle. The account has not been resolved.

(SOR ¶ 1.c.): There is an education account with the U.S. Department of Veterans Affairs (referred to in the SOR as the Veterans Administration) in the amount of \$815 that was considered an overpayment when a scheduled school class was canceled.²² He made a payment of \$815.95 in July 2014, and as of July 15, 2014, the account was considered by the creditor as paid in full.²³ The account has been resolved.

(SOR ¶ 1.d.): There is another education account with the U.S. Department of Veterans Affairs (again referred to in the SOR as the Veterans Administration) in the amount of \$1,413 that was considered an overpayment when a scheduled school class was canceled.²⁴ The Internal Revenue Service (IRS) applied \$1,430.60 of his income tax refund in September 2014, and as of September 19, 2014, the account was considered by the creditor as paid in full.²⁵ The account has been resolved.

(SOR ¶ 1.e.): There is a bank credit card account with a credit limit of \$5,000 and a reported remaining balance of \$5,218 although \$4,651 was charged off.²⁶ Applicant contended he made two payments each of \$2,500 and one payment of \$218 in

¹⁸ Item 2, *supra* note 13, at 2.

¹⁹ Item 3, *supra* note 1, at 40.

²⁰ Item 3, *supra* note 1, at 40; Item 1, *supra* note 2, at 1.

²¹ Item 3, *supra* note 1, at 40; Item 1, *supra* note 2, at 1; Item 2, *supra* note 13, at 2; Applicant’s Response to the FORM, *supra* note 4.

²² Item 2, *supra* note 13, at 2; Item 3, *supra* note 1, at 42.

²³ Letter, dated July 15, 2014, attached to Applicant’s Response to the FORM; Item 2, *supra* note 13, at 2.

²⁴ Item 2, *supra* note 13, at 2; Item 3, *supra* note 1, at 42.

²⁵ IRS Letter, dated September 19, 2014, attached to Applicant’s Response to the FORM; Item 2, *supra* note 13, at 2.

²⁶ Item 2, *supra* note 13, at 1-2.

November and December 2010 to an identified collection agent.²⁷ He repeatedly disputed the status of the account, but no correction has been made.²⁸ He also noted that he furnished his documentation to the “security clearance interviewer,” presumably someone from the U.S. Office of Personnel Management (OPM).²⁹ Since the account was previously charged off and transferred or sold to another collection agent, and that agent received the amount due, the account has not been separately reported in Applicant’s February 2015 credit report. The account has been resolved.

(SOR ¶ 1.f.): There is a bank credit card account with a credit limit of \$500 and a high credit of \$1,333 that was charged off in the amount of \$1,333 and transferred or sold to a debt buyer.³⁰ The account became delinquent when Applicant’s first wife ran up the balance before their divorce.³¹ Applicant contended he paid off the account in full.³² The account is reported in Applicant’s February 2015 credit report as having a zero balance.³³ The account has been resolved.

(SOR ¶ 1.g.): There is a Military Star credit card account with a balance of \$4,900 that purportedly became delinquent in the amount of \$5,966.³⁴ The IRS applied \$4,954.66 of his income tax refund in September 2014, and as of February 2015, the account balance was reflected in Applicant’s credit report as zero.³⁵ The account has been resolved.

Applicant’s February 2015 credit report reflects no other delinquent debts. He has committed himself to not missing any payments on his accounts and contends the financial problems that occurred during his divorce will never recur.³⁶ Applicant’s financial problems appear to be under control.

²⁷ Item 1, *supra* note 2, at 2; Applicant’s Response to the FORM, *supra* note 4.

²⁸ Applicant’s Response to the FORM, *supra* note 4; Item 2, *supra* note 13, at 1-2.

²⁹ Item 1, *supra* note 2, at 2; Applicant’s Response to the FORM, *supra* note 4.

³⁰ Item 2, *supra* note 13, at 3.

³¹ Item 1, *supra* note 2, at 2.

³² Applicant’s Response to the FORM, *supra* note 4.

³³ Item 2, *supra* note 13, at 3.

³⁴ Item 2, *supra* note 13, at 3.

³⁵ IRS Letter, *supra* note 25; Item 2, *supra* note 13, at 3.

³⁶ Applicant’s Response to the FORM, *supra* note 4; Item 1, *supra* note 2, at 2.

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.”³⁷ 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.”³⁸

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.”³⁹ 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.⁴⁰

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

³⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁸ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁹ “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).

⁴⁰ 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.”⁴¹

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.”⁴² 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 financial problems initially arose in 2010 and continued for several years thereafter. Accounts became delinquent and were placed for collection or charged off. One vehicle was repossessed. AG ¶¶ 19(a) and 19(c) apply.

⁴¹ *Egan*, 484 U.S. at 531.

⁴² 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.”⁴³ Under AG ¶ 20(e) it is potentially mitigating 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.”

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply. Applicant’s financial problems were not caused by his frivolous or irresponsible spending, and he did not spend beyond his means. Instead, those financial problems were largely beyond his control. They arose in 2010, when he was working in Afghanistan and his first wife took money out of his bank account and maximized a credit card account just prior to their divorce. Because of her actions, the divorce, his location in Afghanistan, and his current wife’s unspecified medical issues, Applicant had insufficient money to maintain his monthly payments. As a result, various accounts became delinquent and placed for collection, or charged off.

Upon becoming aware of the delinquent status of some of his accounts, Applicant cashed out his 401(k) retirement account and contacted his creditors in an effort to resolve his delinquent accounts. Of Appellant’s seven SOR-related accounts, six have been resolved. The remaining account has not yet been resolved, although Applicant has repeatedly attempted to acquire the necessary information regarding his

⁴³ 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)).

repossessed vehicle.⁴⁴ Furthermore, the evidence appears to support Applicant's disputes related to account balances and status. There are clear indications that Applicant's financial problems are under control. His actions do not cast doubt on his current reliability, trustworthiness, or good judgment.⁴⁵

Security clearance adjudications are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

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.⁴⁶

⁴⁴ "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.

⁴⁵ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁴⁶ 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).

There is some evidence against mitigating Applicant's conduct. Applicant failed to insure that his regular monthly payments to creditors were made in a timely manner. As a result, accounts became delinquent and were placed for collection. One vehicle was repossessed.

The mitigating evidence under the whole-person concept is more substantial. Applicant is an Army veteran with an honorable discharge. As a member of the military or as a government contractor, he has served in Korea and Afghanistan. Applicant's financial problems were not caused by his frivolous or irresponsible spending, and he did not spend beyond his means. Rather, they were largely beyond his control. They arose in 2010, when he was working in Afghanistan and were caused by his first wife just prior to their divorce. They continued because of her actions, the divorce, his oversea location, and his current wife's medical issues. The entire situation occurred under such circumstances that it is unlikely to recur. There are clear indications that Applicant's financial problems are under control.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant

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