



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



In the matter of:)
)
 ----) ISCR Case No. 14-02305
)
 Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

06/16/2015

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 November 19, 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 July 11, 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

¹ Item 2 (e-QIP, dated November 19, 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 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a statement, notarized July 30, 2014, 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 mailed to Applicant on April 7, 2015, 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 April 14, 2015. A response was due by May 14, 2015, but as of June 8, 2015, he had not submitted a response to the FORM. The case was assigned to me on June 12, 2015.

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.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 40-year-old employee of a defense contractor. He has been serving as a project manager with his current employer since October 2009.³ He was previously unemployed from February 2009 until October 2009.⁴ Applicant's educational background was not revealed in his e-QIP, and he did not submit any evidence regarding same. He has never served with the U.S. military.⁵ He has never held a security clearance.⁶ Applicant was married in December 1999.⁷

² Item 1 (Applicant's Answer to the SOR, dated July 30, 2014).

³ Item 2, *supra* note 1, at 9-10.

⁴ Item 2, *supra* note 1, at 10.

⁵ Item 2, *supra* note 1, at 14.

⁶ Item 2, *supra* note 1, at 29.

⁷ Item 2, *supra* note 1, at 16-17.

Financial Considerations

It is unclear when Applicant first experienced financial difficulties, although he estimated an issue with student loans initially arose in April 2001.⁸ In November 2013, Applicant reported that he owed Sallie Mae approximately \$32,000 in student loans, but said he was “on a payment plan that will put the account current and continue to pay off the loan.”⁹ A review of his December 2013 credit report reveals a number of guaranteed student loans that were opened as early as 2002 that subsequently became delinquent, and they were either charged off or had claims filed for the insured portions of the loans.¹⁰

The SOR identified seven purportedly continuing delinquent student loans, totaling approximately \$92,444, that had been placed for collection and charged off, as reflected by the December 2013 credit report and a June 2014 credit report.¹¹ Those debts and their respective current status, according to the credit reports are described as follows: SOR ¶ 1.a. - a balance of \$21,903 that was charged off;¹² SOR ¶ 1.b. - a balance of \$11,048 that was charged off;¹³ SOR ¶ 1.c. - a balance of \$20,024 that was charged off;¹⁴ SOR ¶ 1.d. - a balance of \$11,506 that was charged off;¹⁵ SOR ¶ 1.e. - a balance of \$17,107 that was charged off;¹⁶ SOR ¶ 1.f. - a balance of \$3,599 that was charged off;¹⁷ and SOR ¶ 1.g. - a balance of \$7,257 that was charged off.¹⁸ Although Applicant initially contended being on a repayment plan, he failed to submit any documentation to support his contention that: a) he had a payment plan; and b) that he had made any payments to the creditors under the plan. Furthermore, he admitted that as of the date of the SOR, those student loans remained unpaid.

It is unclear how or why Applicant’s finances deteriorated to the point where his student loans were not timely addressed by him to prevent them from becoming

⁸ Item 2, *supra* note 1, at 31.

⁹ Item 2, *supra* note 1, at 31.

¹⁰ Item 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 31, 2013). Applicant’s credit report reflects deferred student loans with the state education loaning authority, delinquent student loans with a [conglomerate](#) that deals in the administration and repayment of [student loans](#) and education financial services, and delinquent and deferred student loans with Sallie Mae.

¹¹ Item 4 (Equifax Credit Report, dated June 5, 2014).

¹² Item 4, *supra* note 11, at 2.

¹³ Item 4, *supra* note 11, at 2.

¹⁴ Item 4, *supra* note 11, at 2.

¹⁵ Item 4, *supra* note 11, at 2.

¹⁶ Item 4, *supra* note 11, at 2.

¹⁷ Item 4, *supra* note 11, at 2.

¹⁸ Item 4, *supra* note 11, at 2.

delinquent, placed for collection, or charged off. Applicant reported no major illnesses or other significant issues such as a loss of employment (except for the period February 2009 until October 2009), divorce, or other unexpected incidents that were largely beyond his control. 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 household or debt expenses, or whether or not he has any funds remaining at the end of each month for discretionary use or savings. While it does not appear that Applicant's non-student loan accounts are delinquent, Applicant offered no evidence to indicate that his financial problems are now under control.

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."¹⁹ 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."²⁰

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."²¹ The Government initially has the burden of producing evidence to establish

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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

²¹ "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).

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.²²

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."²³

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."²⁴ 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

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

²³ *Egan*, 484 U.S. at 531

²⁴ See Exec. Or. 10865 § 7.

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 started as early as 2001. He found himself with insufficient funds to continue making his routine monthly payments and various student loan accounts became delinquent, and were placed for collection and charged off. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”²⁵ In addition, AG ¶ 20(e) may apply if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since about 2001 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant was previously unemployed from February 2009 until October 2009. While the loss of his salary during that period of unemployment would be expected to have some financial impact on him, it is unclear why his financial issues commenced approximately eight

²⁵ 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)).

years before his period of unemployment. Applicant offered no evidence of a good-faith effort to resolve any of his delinquent student loans. He essentially ignored them, and seemingly continues to do so. There is no evidence to indicate that Applicant ever received financial 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. While there is no evidence that any other accounts are delinquent, there is no evidence to reflect that Applicant's financial problems are under control. Applicant has not acted responsibly by failing to address his delinquent student loan accounts and by making little, if any, efforts of working with his creditors.²⁶ Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment.²⁷

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.²⁸

There is some evidence in favor of mitigating Applicant's conduct. He was previously unemployed from February 2009 until October 2009. He has declared his

²⁶ "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.

²⁷ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

²⁸ 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).

intentions of bringing his student loan accounts current and eventually repaying the loans. There is no evidence that any other accounts are delinquent.

There is no evidence as to Applicant's reputation for reliability, trustworthiness, and good judgment. Applicant's long-standing failure to repay his student loan creditors between 2001 and early 2009, when he became unemployed, and since late 2009, when he obtained another position, even in the smallest 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 has simply made the assertions that he contacted his student loan creditors and arranged for a debt repayment plan. In the absence of documentation to support his assertions, little weight can be given to those assertions. Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment. Considering the absence of confirmed 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:²⁹

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 his delinquent student loan debts. 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

²⁹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

