



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-02704

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel

For Applicant: *Pro se*

02/05/2015

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On October 11, 2012, Applicant applied for a non-sensitive position and submitted a Questionnaire for Non-Sensitive Positions (SF 85).¹ On February 6, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.² On July 28, 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*

¹ GE 5 (SF 85, dated October 11, 2012).

² GE 1 (e-QIP, dated February 6, 2014).

Security Clearance Review Program (January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (effective within the DOD on September 1, 2006) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct), and detailed reasons why the DOD adjudicators could not 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 sworn statement, dated August 18, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. On November 13, 2014, Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on November 17, 2014. A Notice of Hearing was issued on December 2, 2014. I convened the hearing, as scheduled, on December 18, 2014.

During the hearing, seven Government exhibits (GE 1 through GE 7) and five Applicant exhibits (AE A through AE E) were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on January 6, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted additional documents which were marked as AE F through AE J and admitted into evidence without objection. The record closed on December 30, 2014.

Findings of Fact

In his Answer to the SOR, Applicant admitted five of the factual allegations in the SOR under financial considerations (§§ 1.d., 1.e., 1.j., 1.l., and 1.m.). He initially failed to address one of the allegations but subsequently denied it. 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 maintenance mechanic since November 2011.³ He was laid off in May 2011 and remained unemployed until November 2011.⁴ A May 1992 high school graduate,⁵ Applicant attended a college for some time, but did not earn a degree.⁶ He

³ GE 1, *supra* note 2, at 12.

⁴ GE 1, *supra* note 2, at 13; GE 2 (Personal Subject Interview, dated May 4, 2014), at 4.

⁵ GE 1, *supra* note 2, at 12.

⁶ GE 5, *supra* note 1, at 2.

was granted a secret security clearance in 1995,⁷ but the current status of that security clearance is not known. He does, however, have a public trust access. Applicant served in an enlisted capacity with the U.S. Marine Corps from June 1992 until November 1999, and he received an honorable discharge.⁸ He also was a member of the U.S. Air Force Inactive Reserve from March 2009 until November 2011.⁹

During his period of military service, Applicant was awarded the Meritorious Unit Commendation (with one star), the Good Conduct Medal (with one star), the National Defense Service Medal, the Joint Meritorious Unit Award, the Sea Service Deployment Ribbon (with one star), and the Armed Forces Expeditionary Medal. He also received a Meritorious Mast.¹⁰ Applicant was married three times: he was married in February 1993, and divorced in August 1997; married in June 1996, and divorced in November 2003; and married in December 2007.¹¹ He has two children: a daughter born in 1994 and a son born in 2006.¹²

Financial Considerations

It is unclear as to when Applicant started experiencing financial difficulties as he never furnished any explanation regarding the earliest years of such difficulties except to refer to money being tight because his wife was not working, his son had some medical issues, and they had relocated. There are, however, several delinquent accounts as early as 2007 and 2008 that appear in his October 2012 credit report.¹³ Applicant's supervisor until January 2008 reported in November 2012 that for the past four years he had been dealing with collections and debt recovery calls pertaining to Applicant.¹⁴

The SOR initially identified 13 purportedly continuing delinquencies as reflected by credit reports from October 2012,¹⁵ February 2014,¹⁶ and October 2014,¹⁷ totaling

⁷ GE 1, *supra* note 2, at 41-42.

⁸ GE 1, *supra* note 2, at 21; AE K (Certificate of Release or Discharge from Active Duty, dated November 8, 1999).

⁹ GE 2, *supra* note 4, at 4; Tr. at 79-80.

¹⁰ AE K, *supra* note 8.

¹¹ GE 1, *supra* note 2, at 24-26.

¹² GE 1, *supra* note 2, at 28-29.

¹³ GE 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 31, 2012).

¹⁴ GE 7 (Investigative Request for Employment Data and Supervisor Information, dated November 13, 2012), at 2.

¹⁵ GE 6, *supra* note 13.

¹⁶ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 22, 2014).

¹⁷ GE 4 (Equifax Credit Report, dated October 31, 2014).

approximately \$12,036. At the commencement of the hearing Department Counsel moved to amend the SOR by withdrawing two of the allegations (SOR ¶¶ 1.e. and 1.f.). There being no objection, the motion was granted and the two allegations were withdrawn.¹⁸ Those remaining debts listed in the SOR and their respective current status, according to the credit reports, other evidence in the case file, and Applicant's admissions regarding the same, are described below.

(SOR ¶ 1.a.): There was a medical account for Applicant's son in the amount of \$1,243 that went to judgment in December 2010.¹⁹ Applicant was unable to pay the bill in 2008 when his son dislocated his shoulder because he did not have medical insurance.²⁰ He claimed he was unaware of the judgment; had not received any bills or notices other than a few telephone calls; and only became aware of the judgment in 2011 when he was in the process of purchasing a new residence.²¹ Commencing in February 2014 – five months before the SOR was issued - Applicant made three monthly \$100 payments to the collection agent.²² In March 2014, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM), and he indicated he was making the monthly payments on the account, and he estimated he would satisfy the account by June 2014.²³ On July 22, 2014, after Applicant had repaid the entire remaining balance, the collection agent filed a satisfaction of judgment with the court.²⁴ The account has been resolved.

(SOR ¶ 1.b.): There is a utility and fuel account with a high credit and past-due balance of \$436 that was delinquent during the last three months of 2007, placed for collection, and charged off in January 2008.²⁵ When Applicant's wife learned about the account, Applicant contacted the utility company to validate the account contending he had never received service from that particular utility as he resided outside of their service area.²⁶ He requested documentation indicating that he had signed up for the service, but the utility refused to furnish any documentation, claiming Applicant's social security number was on the account.²⁷ It is Applicant's opinion that his ex-wife (not other-wise identified) was responsible for using his name for the account following their

¹⁸ Tr. at 11.

¹⁹ GE 6, *supra* note 13, at 4; GE 3, *supra* note 16, at 5; Tr. at 22-24.

²⁰ Tr. at 23-24.

²¹ Tr. at 24- 26.

²² Tr. at 27.

²³ GE 2, *supra* note 4, at 5.

²⁴ AE A (Satisfaction of Judgment, dated July 22, 2014); Tr. at 27.

²⁵ GE 6, *supra* note 13, at 5; GE 3, *supra* note 16, at 6.

²⁶ Tr. at 29-30.

²⁷ Tr. at 29-30.

divorce.²⁸ The matter is at a standstill with the creditor's refusal to furnish Applicant written validation of the account and Applicant's refusal to accept responsibility for the account in the absence of validation. Nevertheless, without some documentation to support Applicant's contentions such as written communications between the parties, or a printed map of the utility service areas and the locations of Applicant's residences within or without of those service areas, this issue has not been resolved.

(SOR ¶ 1.c.): There is a cable account with a high credit and past-due balance of \$566 that was placed for collection in 2008.²⁹ Applicant contended the charge was for a cable box that was not returned when he moved, but that once he unpacked following the move, he eventually returned the cable box to the cable company and received a receipt for it.³⁰ Unfortunately, the collection agent and the original creditor apparently differed on the status of the account, and Applicant filed a dispute through a credit repair firm.³¹ On November 13, 2014, the account was removed from his TransUnion Credit Report.³² It no longer appears in his October 2014 Equifax Credit Report.³³ Applicant is awaiting the results of the dispute with the remaining credit reporting service.³⁴ The account has been resolved.

(SOR ¶ 1.d.): There is a medical account for Applicant's son with a high credit and past-due balance of \$271 that was placed for collection in 2012.³⁵ This was one of several medical accounts that Applicant was unable to pay because he did not have medical insurance. Applicant initially claimed he had paid off the account, but he was confused as he had paid another medical account with the same collection agent (SOR ¶ 1.e.).³⁶ During the hearing he contended he also paid this account, and that he is awaiting receipt of documentation to reflect that fact.³⁷ He subsequently disputed the account with Equifax, and while Equifax acknowledged the dispute, no decision had yet been made as of October 31, 2014.³⁸ While Applicant has not submitted any documentation to support his contention that the account has been paid, it, nevertheless, appears that the account is in the process of being resolved.

²⁸ Tr. at 30.

²⁹ GE 6, *supra* note 13, at 8; GE 3, *supra* note 16, at 6; Tr. at 34-37.

³⁰ Tr. at 35-37.

³¹ AE H (Credit Repair Case Status, undated); AE G (Case Results, dated October 30, 2014); Tr. at 38-39.

³² AE G, *supra* note 31.

³³ GE 4, *supra* note 17.

³⁴ AE H, *supra* note 31.

³⁵ GE 6, *supra* note 13, at 9; GE 3, *supra* note 16, at 7.

³⁶ AE D (Letter, dated November 28, 2014).

³⁷ Tr. at 40-41.

³⁸ GE 4, *supra* note 17, at 1.

(SOR ¶ 1.g.): There is an automobile lease/purchase account that was opened in 2005 in the approximate amount of \$13,000. Applicant made some monthly payments before he returned the vehicle. At that point, since he relinquished the vehicle, under the terms of the agreement, the agreement was cancelled and Applicant owed no further money. In November 2008, the vehicle was stolen from the dealer's lot. During the ensuing police investigation, Applicant was interviewed and he explained that he had turned the vehicle in about one year earlier. The dealer filed an insurance claim for the loss and, in January 2013, filed a collection claim against Applicant reflecting a high credit of \$6,007 and a past-due balance of \$6,787.³⁹ Applicant explained the situation to the collection attorney in May 2014, and because he has not received any further communication from that attorney, he assumed the matter was resolved.⁴⁰ The account no longer appears in his October 2014 Equifax Credit Report.⁴¹ The account has been resolved.

(SOR ¶ 1.h.): There is a bank checking account with a high credit and past-due balance of \$151 that was placed for collection and eventually sold to a "factoring company."⁴² Applicant filed a dispute through his credit repair firm,⁴³ and on November 13, 2014, the account was removed from his TransUnion Credit Report.⁴⁴ It no longer appears in his October 2014 Equifax Credit Report.⁴⁵ Applicant was initially unaware of the collection agent, but once it was revealed that the account was related to his checking account that was purportedly closed in good standing, he accepted responsibility for it.⁴⁶ Despite the current status of the account and because he is tired of dealing with his delinquent accounts, Applicant intends to pay this account "so [he] can proceed on with [his] life."⁴⁷ The account has not been resolved.

(SOR ¶ 1.g.): There is a satellite television account with a high credit and unpaid balance of \$448 that was placed for collection and eventually sold to a debt purchaser.⁴⁸ Applicant denied that he had ever had a satellite television account and contended he always had cable service.⁴⁹ Applicant filed a dispute through his credit repair firm,⁵⁰ and

³⁹ GE 6, *supra* note 13, at 7; GE 3, *supra* note 16, at 8; GE 2, *supra* note 4, at 6; Tr. at 41-47.

⁴⁰ Tr. at 43.

⁴¹ GE 4, *supra* note 17.

⁴² GE 6, *supra* note 13, at 10; GE 3, *supra* note 16, at 9; It should be noted that "factoring company" is a company that buys "accounts receivable" from a current creditor and then collects on those receivables from the debtor. A factored account is not supposed to be an account that is in collection or charged off.

⁴³ AE H, *supra* note 31.

⁴⁴ AE G, *supra* note 31.

⁴⁵ GE 4, *supra* note 17.

⁴⁶ GE 2, *supra* note 4, at 7; Tr. at 48-49.

⁴⁷ Tr. at 49-50.

⁴⁸ GE 6, *supra* note 13, at 10; GE 3, *supra* note 16, at 9.

⁴⁹ Tr. at 53.

it no longer appears in his October 2014 Equifax Credit Report.⁵¹ The account has been resolved.

(SOR ¶ 1.j.): There is a trash collection service account with an unpaid balance of \$152 that was placed for collection in 2013.⁵² Applicant was unaware that there was still a balance until he first learned that fact during his OPM interview. He initially thought his wife had taken care of the account, but it had apparently “slipped through the cracks.”⁵³ He paid the bill in cash in April 2014, but is not sure where the location of the receipt might be.⁵⁴ The account no longer appears in his October 2014 Equifax Credit Report.⁵⁵ The account has been resolved.

(SOR ¶ 1.k.): There is an automobile insurance account with an unpaid balance of \$226 that was placed for collection in January 2014.⁵⁶ Applicant was unable to make the final payment in December 2013 because of Christmas expenses, so he made it online the following month, in January 2014.⁵⁷ While he has no documentation to confirm his payment, the account no longer appears in his October 2014 Equifax Credit Report.⁵⁸ The account has been resolved.

(SOR ¶¶ 1.l. and 1.m.): There are two returned checks in the amounts of \$65 and \$23 that were placed for collection.⁵⁹ There is some inconsistency regarding the facts on these two checks. The payees of the checks were never identified and Applicant did not explain the circumstances surrounding their issuance. During his March 2014 OPM interview, Applicant claimed to be unaware of the accounts.⁶⁰ In his Answer to the SOR, he stated that the accounts would be paid by November 1, 2014.⁶¹ They were not. During the December 2014 hearing, Applicant revised his memory and stated that he was aware of the checks in 2011, but had forgotten about them because of their respective low amounts.⁶² Applicant’s credit repair firm verified the accounts, and

⁵⁰ AE H, *supra* note 31.

⁵¹ GE 4, *supra* note 17.

⁵² GE 3, *supra* note 16, at 10.

⁵³ Tr. at 53-54; GE 2, *supra* note 4, at 7.

⁵⁴ Tr. at 54-55.

⁵⁵ GE 4, *supra* note 17.

⁵⁶ GE 3, *supra* note 16, at 11.

⁵⁷ Tr. at 56.

⁵⁸ GE 4, *supra* note 17.

⁵⁹ GE 3, *supra* note 16, at 9.

⁶⁰ GE 2, *supra* note 4, at 7.

⁶¹ Applicant’s Answer to the SOR, dated August 18, 2014, at 3.

⁶² Tr. at 57.

Applicant stated he intended to pay both accounts the week following the hearing.⁶³ Applicant has not submitted any documentation to confirm that either account has been paid. The accounts have not been resolved.

In December 2014, Applicant submitted a Personal Financial Statement that reflected a combined gross monthly income of \$5,200 and total monthly expenses of \$4,227. That left him with an estimated monthly surplus of \$973 available for discretionary savings or spending.⁶⁴ It is unclear if the numbers are accurate, for Applicant's wife pays monthly child support of \$450, and that payment is not specifically listed as such.⁶⁵ Applicant's annual salary has increased since he started working for his current employer, and he now earns about \$55,000 per year.⁶⁶ Applicant and his wife try to budget as much as possible, but both of them have bad credit ratings because of their divorces, and their respective low credit scores cause higher interest rates and higher payments. They have reduced expenses, paid off student loans, satisfied liens, and paid off all their other delinquent accounts.⁶⁷

As noted above, in late April or early May 2014, Applicant engaged the professional services of a law firm serving as a credit repair firm to assist him in reviewing his delinquent accounts, analyzing his responsibilities, seeking validation of the accounts, disputing certain accounts, and resolving errors in the credit reports. He pays them \$119 per month.⁶⁸ The firm also provided Applicant with valuable guidance as he continues to manage his credit.⁶⁹

Personal Conduct

(SOR ¶ 2.a.): On February 6, 2014, when Applicant completed his e-QIP, he responded to questions pertaining to his financial record. Two of those questions in Section 26 – Financial Record (Delinquency Involving Routine Accounts) – asked if, in the last seven years, he had bills or debts turned over to a collection agency; and if he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. Applicant answered “no” to those questions. He certified that the response was “true, complete, and correct” to the best of his knowledge and belief,⁷⁰ but the response

⁶³ Tr. at 58-60.

⁶⁴ AE I (Personal Financial Statement, dated December 20, 2014).

⁶⁵ See AE I, *supra* note 64, at 4, wherein there is no entry for “paid child support.” Applicant also submitted a worksheet listing income and expenses, and that document reflects \$673 available for discretionary savings or spending. See AE J (Worksheet, undated).

⁶⁶ Tr. at 60.

⁶⁷ Tr. at 62-66; AE B (Satisfaction of Lien, dated September 30, 2010); AE C (Letter, dated October 1, 2014).

⁶⁸ AE F (Engagement Agreement and Limited Designation of Agency, dated August 11, 2014); Tr. at 31-33, 51.

⁶⁹ AE F, *supra* note 68, at 2.

⁷⁰ GE 1, *supra* note 2, at 43-44.

to those questions was, in fact, false for at that time Applicant had several accounts that were either placed for collection, charged off, or cancelled. He subsequently explained that when he completed the e-QIP he was doing so from his memory and had not given serious thought to the questions. In addition, he thought a lot of the accounts that might have been listed actually fell outside the seven-year window of the questions and that they had already been dropped from his credit report.⁷¹ To his credit, Applicant did identify a delinquent student loan. He denied having “malicious intent” to falsify his responses.⁷²

Character References

One of Applicant’s co-workers, who is also a good friend, has characterized Applicant in very favorable terms. Applicant is “completely honest,” a loving husband, outstanding father, and a “huge asset to [the] shop.”⁷³

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.”⁷⁴ 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.”⁷⁵

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

⁷¹ Tr. at 69-71.

⁷² Tr. at 69-71.

⁷³ AE E (Character Reference, undated).

⁷⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁷⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”⁷⁶ 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.⁷⁷

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.”⁷⁸

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.”⁷⁹ 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.

⁷⁶ “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).

⁷⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷⁸ *Egan*, 484 U.S. at 531.

⁷⁹ See Exec. Or. 10865 § 7.

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. Various accounts were placed for collection or charged off, and a judgment against him was obtained by one of his creditors. 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."⁸⁰ In addition, AG ¶ 20(e) may apply if "the individual has a reasonable

⁸⁰ 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].

ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (internal citation and footnote omitted, quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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) all partially apply. Applicant’s financial problems were not caused by frivolous or irresponsible spending, and he did not spend beyond his means. Instead, as noted above, Applicant’s initial significant financial problems started some time in 2007 or 2008 because money was tight due to his wife not working, his son had some medical issues, and they had relocated. While those issues may have had some negative impact on Applicant’s finances, it remains unclear as what degree they may have been beyond Applicant’s control. His six-month period of unemployment in 2011 certainly did not help him. It is apparent, however, that Applicant took a variety of steps to prioritize his accounts to enable him to pay some of them and delay paying others.

My impression of Applicant is that he is substantially naive about financial matters, although he seems to be gaining increasing knowledge from his experiences with his creditors and his credit repair firm. Applicant’s knowledge of his accounts is relatively poor. He was easily confused if there were more than one account with a creditor or collection agent. This confusion is somewhat understandable since Applicant’s wife handled some of the accounts and Applicant handled others. Once all of his delinquent accounts were specified and the original creditors identified, Applicant’s resolution efforts increased. Some accounts were paid well before Applicant’s SOR was issued. Other accounts were disputed for a variety of reasons, and several of them were removed from his credit reports. With the assistance of his credit repair firm, as well as independently, he is currently addressing those accounts that have not yet been resolved.

Applicant has received some financial counseling from his credit repair firm. Nevertheless, all of Applicant’s newer accounts appear to be current. He has resolved many of the accounts alleged in the SOR as well as some accounts that were not in the SOR. There are clear indications that Applicant’s financial problems are finally under control. Applicant’s actions under the circumstances confronting him, do not cast doubt on his current reliability, trustworthiness, or good judgment.⁸¹

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful

⁸¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is a

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, on February 6, 2014, when Applicant completed his e-QIP, he responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record asked if, in the past seven years, he had bills or debts turned over to a collection agency; and if he had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed. Applicant answered “no” to those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false.

Applicant’s responses provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely the result of misunderstanding of the true facts on his part. Applicant subsequently denied intending to falsify his responses and explained that when he completed the e-QIP he was doing so from his memory and had not given serious thought to the questions. In addition, he thought a lot of the accounts that might have been listed actually fell outside the seven–year window of the questions and that they had already been dropped from his credit report. He did identify one delinquent student loan. Applicant denied having “malicious intent” to falsify his responses.

I have considered Applicant’s background, professional career, including his military service, and his seemingly superficial understanding of financial matters, in analyzing his actions. His confusion and resultant actions are understandable and his position is reasonable. As it pertains to the alleged deliberate falsifications, Applicant’s credible explanation has refuted AG ¶ 16(a).⁸² In this instance, I conclude that Applicant’s actions do not cast doubt on his reliability, trustworthiness, or good judgment.

Whole-Person Concept

⁸² The Appeal Board has explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant’s intent or state of mind at the time the omission occurred.

ISCR Case No. 03-10390 at 8 (App. Bd. Apr. 12, 2005) (citing ISCR Case No. 02-23133 (App. Bd. Jun. 9, 2004)).

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 relevant 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.

There is some evidence against mitigating Applicant's conduct. He allowed several accounts to become delinquent, placed for collection or charged off, and had one delinquent account go to judgment against him.

The mitigating evidence under the whole-person concept is more substantial than the disqualifying evidence. Well before the SOR was issued, Applicant resolved some of his delinquent accounts and then, with the assistance of a credit repair firm, started addressing the remaining accounts. While it is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under Directive ¶ E3.1.14 for pertinent allegations, and the burden shifts to an applicant to establish either that he or she is not responsible for the debts in question, or that matters in mitigation apply,⁸³ in this instance, Applicant has successfully disputed some of the adverse listings appearing in his credit reports that also appear as allegations in the SOR. There are clear indications that Applicant's financial problems are under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁸⁴

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

⁸³ ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010).

⁸⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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. Nevertheless, this decision should serve as a warning that his failure to continue his debt-resolution efforts or the actual accrual of new delinquent debts will adversely affect his future eligibility for a security clearance.⁸⁵ Overall, the record evidence leaves me without substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and personal conduct. 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:	Withdrawn
Subparagraph 1.f:	Withdrawn
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant

⁸⁵ While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant’s financial condition. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant’s security clearance. See, e.g., ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

Subparagraph 1.l: For Applicant
Subparagraph 1.m: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: 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