



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03501

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel

For Applicant: *Pro se*

09/15/2015

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 July 30, 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 January 29, 2015, 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 July 30, 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 notarized statement, dated February 15, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on June 8, 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 June 10, 2015. A response was due by July 10, 2015. He did not submit a response to the FORM. The case was assigned to me on September 1, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted three of the factual allegations pertaining to financial considerations in the SOR (§§ 1.a., 1.d., and 1.e.). 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 fitter with his current employer since February 2012.² He was unemployed from February 2003 until May 2004, and again from April 2011 until February 2012.³ A 2001 high school graduate, he has attended a local community college, but did not earn a degree.⁴ Applicant enlisted in the U.S. Navy in May 2004, and he remained on active duty until the expiration of his enlistment in April 2011, for which he received an honorable discharge.⁵ While he mentioned a nine-month deployment, Applicant did not submit any documentation regarding specific deployments he was on or any awards and decorations he might have earned. He held a secret security clearance since 2004, but that clearance was suspended in November 2010 when he was charged with domestic assault.⁶ Applicant was married the first time in August 2004 and divorced in

² Item 2, *supra* note 1, at 13.

³ Item 2, *supra* note 1, at 14-15.

⁴ Item 2, *supra* note 1, at 11-12.

⁵ Item 2, *supra* note 1, at 14-17.

⁶ Item 3 (Personal Subject Interview, dated October 17, 2013), at 5-6.

July 2010. He married his second wife in January 2011.⁷ He has two children (born in 2005 and 2011), and one stepchild (born in 2004).⁸

Financial Considerations

It is unclear when Applicant first experienced the financial difficulties that led to the point where his accounts were not timely addressed by him to prevent them from becoming delinquent, placed for collection, or charged off. A review of his August 2013 credit report reveals a number of accounts that became delinquent in 2008.⁹ Applicant generally attributed some of his financial problems to a lack of judgment when he was younger. He had cosigned for a friend and a girlfriend who failed to honor their portion of their agreements to pay their debts. Other identified causes related to the alleged actions of his first wife in (1) opening accounts using Applicant's power of attorney while he was on deployment during an unspecified period; and (2) her failure or refusal to honor agreements to continue making payments on certain accounts. He also noted that his salary had been garnished on five occasions in 2012 for reasons unknown.¹⁰ Other than commenting on individual accounts, Applicant failed to offer specific information as to why he was unable to routinely make his monthly payments or if he simply chose not to honor certain debts.

The SOR identified five purportedly continuing delinquent accounts, totaling approximately \$19,818, which had been placed for collection or charged off. Additionally, one of the charged-off accounts was for a vehicle repossession. Those debts and their respective current status, according to his August 2013 credit report and a January 2015 credit report,¹¹ Applicant's comments to the investigator from the U.S. Office of Personnel Management (OPM), and his Answer to the SOR, are described as follows:

SOR ¶ 1.a. – an individual bank credit card account (purportedly opened by Applicant's first wife) that was placed for collection and charged off in the amount of \$5,013 in 2008;¹² SOR ¶ 1.b. – an individual cable television account that was placed of collection with a balance of \$116;¹³ SOR ¶ 1.c. – another individual cable television account that was placed of collection with a balance of \$149;¹⁴ SOR ¶ 1.d. – a joint automobile loan on a vehicle Applicant purchased for his first wife that was placed for

⁷ Item 2, *supra* note 1, at 19-20.

⁸ Item 2, *supra* note 1, at 23-25.

⁹ Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 16, 2013).

¹⁰ Item 1 (Applicant's Answer to SOR, dated February 15, 2015), at 2; Item 3, *supra* note 6, at 6-7.

¹¹ Item 5 (Equifax Credit Report, dated January 9, 2015).

¹² Item 4, *supra* note 9, at 7, 15; Item 5, *supra* note 11, at 2; Item 3, *supra* note 6, at 6.

¹³ Item 4, *supra* note 9, at 8; Item 3, *supra* note 6, at 6.

¹⁴ Item 4, *supra* note 9, at 11.

collection, the vehicle was repossessed, and the account was charged off in the amount of \$9,824;¹⁵ and SOR ¶ 1.e. - a joint student loan that was placed for collection and charged off in the amount of \$4,716.¹⁶

Applicant noted that he could satisfy two of the debts listed in the SOR (SOR ¶¶ 1.b. and 1.c.) but offered no indication or plan to do so. As to the remaining SOR-debts, he offered no intention to take any resolution actions. Applicant mentioned that he had consulted with an attorney who advised him to file for bankruptcy under Chapter 7 in order to get a fresh start on his finances. During his October 2013 OPM interview, Applicant said he was “currently” taking an online credit course as a pre-requisite to filing for bankruptcy.¹⁷ However, as of this date, nearly two years later, Applicant failed to submit any documentation to support any of his assertions regarding causation of the debts, any payments or payment plans made, completion of financial counseling, or the filing of any bankruptcy petition. Accordingly, I conclude that all of the SOR-debts still remain delinquent and unresolved.

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. 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.”¹⁸ 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.”¹⁹

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.

¹⁵ Item 4, *supra* note 9, at 14; Item 5, *supra* note 11, at 2; Item 3, *supra* note 6, at 6.

¹⁶ Item 4, *supra* note 9, at 13.

¹⁷ Item 3, *supra* note 6, at 7.

¹⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."²⁰ 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.²¹

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."²²

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."²³ 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

²⁰ "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).

²¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²² *Egan*, 484 U.S. at 531.

²³ See Exec. Or. 10865 § 7.

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 started as early as 2008. He either found himself with insufficient funds to continue making his routine monthly payments or chose not to do so, and various accounts became delinquent, and were placed for collection, and charged off. One vehicle was repossessed. 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."²⁴ In addition, AG ¶ 20(e) may apply if "the individual has a reasonable

²⁴ 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

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(c), 20(d), and 20(e) do not apply. AG ¶ 20(b) minimally applies. The nature, frequency, and recency of Applicant’s continuing financial difficulties since about 2008 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant attributed his financial problems to a variety of reasons, but without any explanation as to the specifics, it is difficult to assess the significance they had on his overall financial situation. Aside from unconfirmed statements that he can satisfy some accounts and intends to file for bankruptcy, Applicant offered no documentary evidence of a good-faith effort to resolve any of his delinquent debts. He essentially ignored them, and seemingly continues to do so. Likewise, the issue of probable bankruptcy Applicant first addressed nearly two years ago has still not been resolved.

There is no evidence, other than Applicant’s uncorroborated statement, 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. 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 accounts and by making little, if any, efforts of working with his creditors.²⁵ Applicant’s actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment.²⁶

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):

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)).

²⁵ “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.

²⁶ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(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.²⁷

There is some evidence in favor of mitigating Applicant's conduct. He has been with the same employer since February 2012. He served honorably in the U.S. Navy from May 2004 until April 2011.

Applicant's long-standing failure to repay his creditors since 2008, even in the smallest amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance. There are no indications that Applicant's financial problems are under control. Applicant has simply made the assertions that he can satisfy some accounts and intends to file for bankruptcy. He offered no documentary evidence of a good-faith effort to resolve any of his delinquent debts. In the absence of documentation to support his assertions, little weight can be given to those assertions. Applicant's actions under the circumstances 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:²⁸

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

²⁷ 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).

²⁸ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 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 has failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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.

ROBERT ROBINSON GALES
Administrative Judge