



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)
)

ISCR Case No. 09-03080

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Maxwell P. Wright, Esquire

April 29, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On December 23, 2008, Applicant applied for a security clearance and submitted a Questionnaire for Sensitive Positions version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on February 9, 2010.² On March 17, 2010, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining*

¹ Government Exhibit 1 (SF 86), dated December 23, 2008.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated February 9, 2010).

Eligibility For Access to Classified Information (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on March 22, 2010. In a written statement, notarized on April 7, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on June 25, 2010, and the case was assigned to me on August 4, 2010. A Notice of Hearing was issued on August 23, 2010, and I convened the hearing, as scheduled, on September 23, 2010.

During the hearing, 5 Government exhibits (1-5) and 17 Applicant exhibits (A-Q) were admitted into evidence without objection. Applicant and one other witness testified. The hearing transcript (Tr.) was received on October 4, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted only one of the factual allegations (§ 1.a.) of the SOR. Applicant's admission is incorporated herein as findings of fact. He denied, with an explanation, the remaining allegations (§§ 1.b. through 1.o) of the SOR. 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 30-year-old employee of a defense contractor, currently serving as a senior help desk technician.³ He is seeking to obtain a SECRET security clearance. He was previously granted a TOP SECRET security clearance with access to sensitive compartmented information (SCI) in September 2003.⁴ A 1998 high school graduate, he is presently within one year of obtaining a bachelor's degree in business.⁵

Applicant followed a family military tradition (both his father and grandfather were in the U.S. Army, and he was in the junior Reserve Officer Training Corps (ROTC) in high school),⁶ and he enlisted in the U. S. Air Force in November 2000, remaining on active duty until April 2004.⁷ In January 2004, Applicant underwent a medical evaluation board (MEB) for obstructive sleep apnea and narcolepsy.⁸ In February 2004, an

³ Government Exhibit 1, *supra* note 1, at 4.

⁴ *Id.* at 10.

⁵ Tr. at 79-80.

⁶ *Id.* at 31.

⁷ Government Exhibit 1, *supra* note 1, at 7, 9.

informal physical evaluation board (IPEB) found Applicant unfit for further military service and recommended discharge with severance pay with a 20 percent disability rating.⁹ Applicant accepted the IPEB decision, and he was honorably discharged and given the stated disability rating. In September 2010, the medical advisor to the Air Force Board for the Correction of Military Records (AFBCMR) determined the method used by the U.S. Air Force in calculating Applicant's disability rating was incorrect and at odds with the Veterans Administration Schedule for Rating Disabilities when making rating determinations. The medical advisor recommended an adjustment of the disability rating to 60 percent, making Applicant eligible for a medical disability retirement.¹⁰ To date, a decision has not been issued by AFBCMR.

After leaving active duty, and for the next several years, Applicant held a series of low-paying, part-time and temporary positions, such as restaurant server, until he could obtain a professional position. He also went through two periods of unemployment (April 2004 through May 2004, and March 2005 through June 2005).¹¹ He was also homeless for periods in 2004 and 2005, forced by circumstances to live in his car or in a hotel for varying periods.¹² He joined his current employer in September 2008.¹³

Applicant has never been married,¹⁴ but does have a son (born in 2002) from a prior relationship.¹⁵

Financial Considerations

There was nothing unusual about Applicant's finances until about 2002. Applicant's mother was diagnosed with an illness in 1998 or 1999, and, without Applicant's knowledge or permission, she started opening credit cards in Applicant's name.¹⁶ She used those credit cards to pay for her mortgage, medical bills, a riding lawnmower for his grandparents, and other unspecified expenses.¹⁷ When Applicant's

⁸ Applicant Exhibit N (Letter from Department of the Air Force, Office of the Assistant Secretary, dated September 10, 2010), at 1.

⁹ *Id.* It is interesting to note that the U.S. Department of Veterans Affairs (VA) gave Applicant a disability rating of 60 percent. See Government Exhibit 2 (Letter from VA, dated December 21, 2009), attached to Applicant's Answers to Interrogatories.

¹⁰ *Id.* at 2-3.

¹¹ Government Exhibit 1, *supra* note 1, at 6-7.

¹² Tr. at 69, 75-76, 88.

¹³ Government Exhibit 1, *supra* note 1, at 4.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 9.

¹⁶ Tr. at 65.

¹⁷ Government Exhibit 2 (Personal Subject Interview, dated February 26, 2009), at 4, attached to Applicant's Answers to Interrogatories; Tr. at 29.

mother was too sick to continue working, she went on disability and was unable to continue making the monthly payments on the credit cards.¹⁸ He eventually found out about her actions, but chose not to press any charges against her because he did not want to cause any family issues against her.¹⁹ Unidentified authorities in the Air Force advised him that with his delinquent accounts, he would never obtain the clearance necessary for his job, and advised him to file bankruptcy to wipe the slate clean.²⁰ On March 20, 2002, at the age of 21, Applicant filed a voluntary petition for bankruptcy under the provisions of Chapter 7 of the U.S. Bankruptcy Code.²¹ He claimed \$3,850 in assets and \$37,261.80 in liabilities.²² Of the total liabilities, Applicant estimated about \$30,000 was attributed to his mother's actions.²³ There were 22 delinquent accounts which were considered unsecured nonpriority claims under Schedule F of the petition.²⁴ On June 26, 2002, most of Applicant's debts were discharged.²⁵

Upon leaving active military service, because of his medical issues, Applicant was unable to obtain a good-paying job, and he was left without steady income or any medical insurance coverage.²⁶ He contends that if he had been properly granted a disability rating of 60 percent by the U.S. Air Force, making him eligible for a medical disability retirement, rather than the reduced disability rating he was given, his retirement income and status would have enabled him to maintain a reasonable cash flow sufficient to remain current on all the bills that were subsequently generated.²⁷ Unfortunately, as a result of his periods of unemployment and underemployment, as well as his immaturity and not knowing the importance of maintaining good credit, some accounts became delinquent and were either placed for collection or charged off.²⁸ He managed to make payments for his essential living expenses, but was simply trying to feed himself and survive.²⁹

¹⁸ Tr. at 65-66.

¹⁹ Government Exhibit 2, *supra* note 17, at 4; Tr. at 87.

²⁰ Tr. at 27-28.

²¹ Government Exhibit 3 (Voluntary Petition, dated March 2, 2002).

²² *Id.* at 3.

²³ Tr. at 66.

²⁴ Government Exhibit 3, *supra* note 21, at 12-16.

²⁵ Government Exhibit 3 (Discharge of Debtor, dated June 26, 2002), attached to the Voluntary Petition.

²⁶ Tr. at 67-68.

²⁷ *Id.*

²⁸ *Id.* at 59; Government Exhibit 2 (Personal Subject Interview), *supra* note 17, at 7.

²⁹ Tr. at 89.

In February 2010, Applicant completed a Personal Financial Statement reflecting a net monthly income of \$5,200, including \$1,034 disability income; monthly expenses of \$3,940, including \$1,000 to his church; and debt repayments of \$641.³⁰ He estimated he has a monthly remainder of \$579 available for discretionary spending.³¹ The numbers are essentially unchanged as of September 2010.³² Applicant intends to pay off or settle all of his delinquencies as soon as possible.³³

Applicant has never received any “formal” financial counseling or debt management guidance.³⁴ He did, however, attend a course in business finance in pursuit of his degree, and read a library book about personal finance.³⁵ He considers his financial knowledge to have been attained primarily through “self-education.”³⁶

Commencing in August 2009, Applicant started identifying his creditors by going through his credit report.³⁷ The task was time consuming because numerous accounts were sold or otherwise transferred to different collection agents or debt buyers.³⁸ Upon determining the various outstanding balances and account holders, and because he had started receiving additional income for attending school, Applicant paid off several accounts.³⁹ The SOR identified the remaining 14 purportedly continuing delinquencies as reflected by credit reports from January 2009⁴⁰ and December 2009,⁴¹ totaling approximately \$46,832 in collection or charged off.

As noted by Applicant, some accounts reflected in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating

³⁰ Government Exhibit 2 (Personal Financial Statement, dated February 6, 2010), attached to Applicant’s Answers to Interrogatories.

³¹ *Id.*

³² Tr. at 68.

³³ Government Exhibit 2 (Personal Subject Interview), *supra* note 17, at 7.

³⁴ Tr. at 92-94.

³⁵ *Id.*

³⁶ *Id.* at 93-94.

³⁷ *Id.* at 90.

³⁸ *Id.*

³⁹ *Id.* at 90-91.

⁴⁰ Government Exhibit 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 17, 2009).

⁴¹ Government Exhibit 5 (Equifax Credit Report, dated December 17, 2009).

other digits. Some accounts reflect no account number. The information reflected is not necessarily accurate or up to date.

Applicant has entered into repayment agreements with a number of creditors, made payments to some creditors, settled accounts with other creditors, and brought other accounts to current status. There are two medical accounts with the same collection agency in the respective amounts \$566 (SOR ¶ 1.b.) and \$445 (SOR ¶ 1.f.) for which, since January 2010, there is a repayment agreement under which Applicant is paying \$25 per month.⁴² As of the date of the hearing, Applicant had made one payment of \$25 and seven payments of \$25.02.⁴³ There is an account in the amount of \$867 (SOR ¶ 1.c.) for which Applicant made several payments, commencing in January 2010.⁴⁴ In April 2010, the account was settled for \$620, and the balance is now zero.⁴⁵ There is a delinquent power utility account in the amount of \$512 (SOR ¶ 1.d.) for which, since April 2010, there is a repayment agreement under which Applicant is paying \$20.04 per month. As of the date of the hearing, Applicant had made five payments.⁴⁶ There is another medical account in the amount of \$350 (SOR ¶ 1.e.) for which Applicant made six \$20.05 payments, commencing in March 2010.⁴⁷

There is a cable television account in the amount of \$475 (SOR ¶ 1.g.) for which Applicant made five \$20.03 payments, commencing in March 2010.⁴⁸ There was an automobile loan on an automobile that was repossessed in 2005, and \$8,720 was charged off.⁴⁹ Despite the charge off, the creditor obtained a judgment in the amount of \$11,735 (SOR ¶ 1.h.).⁵⁰ In December 2009, Applicant started paying the creditor \$20 twice each month; in March 2010, changed to paying \$20.01 twice each month; but he eventually switched to one payment of \$40.01 each month.⁵¹ As of the date of the hearing, Applicant had paid the creditor \$260.06.⁵²

In 2006, while receiving unemployment compensation, Applicant starting working parttime with an employment agency as a “temp.” While the actual jobs he undertook

⁴² Applicant Exhibit A (Letter from collection agency, dated March 9, 2010); Government Exhibit 2 (Payment Plan, undated), attached to Applicant’s Answers to Interrogatories.

⁴³ Applicant Exhibit A (Cancelled checks, various dates); Government Exhibit 2 (payment plan).

⁴⁴ Applicant Exhibit B (Cancelled checks, various dates); Government Exhibit 2 (payment plan).

⁴⁵ Applicant Exhibit B (Letter from collection agency, dated September 16, 2010).

⁴⁶ Applicant Exhibit C (Cancelled checks, various dates).

⁴⁷ Applicant Exhibit D (Cancelled checks, various dates).

⁴⁸ Applicant Exhibit E (Cancelled checks, various dates).

⁴⁹ Government Exhibit 4, *supra* note 41, at 8.

⁵⁰ *Id.* at 6.

⁵¹ Tr. at 43; Government Exhibit 2 (payment plan), *supra* note 42.

⁵² Applicant Exhibit F (Cancelled checks, various dates); Government Exhibit 2 (payment plan).

were sometimes very brief and sporadic, sometimes with several months of no income between jobs, the paperwork submitted by the agency led the state employment security agency to conclude that Applicant had been employed full time throughout the duration of his period of receiving unemployment compensation. As a result, recoupment action against him began without his knowledge, because he had no fixed mailing address at the time as he was living in his car.⁵³ In April 2006, the employment security agency brought the matter to court and, once again, without Applicant's knowledge, obtained a judgment in the amount of \$7,481.⁵⁴ The judgment became a state tax lien in the same amount (SOR ¶ 1.i.). When Applicant first learned of the judgment/lien, he thought it had something to do with his car, but that belief was proven to be inaccurate.⁵⁵ In April 2010, Applicant starting paying the creditor \$177 every other month, and as of the date of the hearing, he had made three such payments.⁵⁶

In May 2006, Applicant was assessed \$576 monthly child support for his son,⁵⁷ but because he was homeless at the time, with no fixed address, he had little knowledge of the process. An unidentified individual met him at one of his job sites and furnished him a form which Applicant completed and mailed. Nothing further transpired until one of his subsequent employers started deducting money from Applicant's salary check because of a garnishment.⁵⁸ While the January 2009 credit report reflects two different balances from Equifax (\$3,013 versus \$6,603),⁵⁹ the December 2009 Equifax credit report reflects a balance of \$5,095 (SOR ¶ 1.j.).⁶⁰ Applicant remained behind in his payments throughout 2009, but as of January 2010, with \$318.80 deducted from his salary every two weeks, his arrearage is rapidly being depleted.⁶¹

When Applicant was in the ROTC, he was required to participate in summer training, but was unable to do so on two occasions because he had to care for his sick mother, and he hurt his ankle.⁶² As a result, he was informed that his options were either to pay back approximately \$10,000 to the Government or to serve on active duty for three years.⁶³ He chose the latter option. Applicant served on active duty for three

⁵³ Tr. at 76-78.

⁵⁴ Government Exhibit 4, *supra* note 41, at 6.

⁵⁵ Tr. at 77-78.

⁵⁶ Applicant Exhibit G (Cancelled checks, various dates).

⁵⁷ Applicant Exhibit H (Child support report, dated September 12, 2010), at 2.

⁵⁸ Tr. at 81.

⁵⁹ Government Exhibit 4, *supra* note 41, at 9.

⁶⁰ Government Exhibit 5, *supra* note 42, at 2.

⁶¹ Applicant Exhibit H, *supra* note 58, at 1-2. An arrearage amount of \$61.98 is included in each payment. Tr. at 46.

⁶² Government Exhibit 2 (Personal Subject Interview), *supra* note 17, at 6.

⁶³ *Id.* at 6-7.

years, four months, and twelve days.⁶⁴ Despite having completed the requisite period of active duty, the Defense Finance and Accounting Service (DFAS) determined that Applicant had not complied with his ROTC agreement and assessed him \$9,836 as the Government “overpayment.”⁶⁵ The account was placed for collection, and the balance somehow increased to \$14,000 (SOR ¶ 1.k.).⁶⁶ It subsequently increased to \$16,972.⁶⁷ Applicant attempted to dispute the debt, and sought a remission or cancellation of the debt, but his efforts, so far, have not successful.⁶⁸ While awaiting a decision and hoping for a reversal of the decision and a refund of amounts already paid,⁶⁹ Applicant has made six \$50 payments to DFAS.⁷⁰

There is a mobile telephone account in the amount of \$210 (SOR ¶ 1.l.) for which Applicant made several \$20 payments commencing in February 2010,⁷¹ and five \$20.07 payments, commencing in April 2010.⁷² There is an electric utility account in the amount of \$3,766 (SOR ¶ 1.m.) for which Applicant made four payments in the amounts of \$20, commencing in December 2009,⁷³ and six payments in the amounts of \$20.06 or \$40.06, commencing in March 2010, as well as a \$1,000 payment in September 2010, thereby settling the account.⁷⁴ The account is now paid in full.⁷⁵ There is an overdrawn checking account in the amount of \$851 (SOR ¶ 1.n.) for which Applicant is paying \$20 per month under a repayment agreement since February 2010.⁷⁶ There is an insurance account in the amount of \$479 (SOR ¶ 1.o.) for which Applicant is paying \$25.01 per month under a repayment agreement since March 2010.⁷⁷

⁶⁴ Government Exhibit 2 (Certificate of Release or Discharge from Active Duty (DD Form 214), dated April 2, 2004), attached to Applicant’s Answers to the Interrogatories, *supra* note 2.

⁶⁵ Government Exhibit 4, *supra* note 41, at 10.

⁶⁶ Government Exhibit 5, *supra* note 42, at 2.

⁶⁷ Tr. at 49.

⁶⁸ Applicant Exhibit I (Letter from Army Review Boards Agency, dated September 3, 2010).

⁶⁹ Tr. at 48-49.

⁷⁰ Applicant Exhibit I (Cancelled checks, various dates).

⁷¹ Government Exhibit 2 (payment plan), *supra* note 42.

⁷² Applicant Exhibit J (Cancelled checks, various dates).

⁷³ Government Exhibit 2 (payment plan and cancelled checks), *supra* note 42.

⁷⁴ Applicant Exhibit K (Letter from creditor, dated September 15, 2010).

⁷⁵ *Id.*

⁷⁶ Applicant Exhibit L (Letter from creditor, dated September 16, 2010, and cancelled checks, various dates); Government Exhibit 2 (payment plan), *supra* note 42..

⁷⁷ Applicant Exhibit M (Letter from creditor, dated September 23, 2010, and cancelled checks, various dates); Government Exhibit 2 (Letter from creditor and payment plan), *supra* note 42.

During the past three-and-one-half years, Applicant has managed to save money in a 401(k) retirement plan, remain current on his other accounts, and start resolving the delinquent accounts.⁷⁸ Since Applicant started addressing his delinquent accounts, he has seen his Fair Isaac (FICO) score increase to 607 to reflect the several positive changes to his credit, in part, because the balances on one or more accounts decreased, eliminating some debt, and because “past negative credit behavior, like missing payments or defaulting on loans, are offset over time by more recent history of credit responsibility.”⁷⁹ Applicant currently has three credit cards to improve his credit; two cards have zero balances, and one has a current balance of \$275.⁸⁰

Character References and Work Performance

Applicant’s annual performance review for calendar year 2009 reflects an employee whose performance exceeds expectations.⁸¹ Supervisors and coworkers, including a corporate vice president (a retired brigadier general), are very supportive of Applicant’s application for a security clearance. Applicant is considered ethical, reliable, trustworthy, dedicated, honest, and professional.⁸² One senior executive commented:⁸³

I have no issues whatsoever with [Applicant’s] work ethic, reliability or trustworthiness. With my years of experience, both in uniformed service and in the Defense industry, I assess that there is little risk (frankly, I don’t believe that anyone can say “no” risk . . . for anybody . . .) in [Applicant] obtaining and retaining a security clearance.

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.”⁸⁴ 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.”⁸⁵

⁷⁸ Tr. at 89.

⁷⁹ Applicant Exhibit O (Score Watch® alert, dated July 14, 2010).

⁸⁰ Tr. at 91-92.

⁸¹ Applicant Exhibit Q (Annual Performance Review, dated February 8, 2010), at 6.

⁸² Applicant Exhibit P (Character references, various dates).

⁸³ *Id.*

⁸⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."⁸⁶ 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.⁸⁷

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."⁸⁸

⁸⁶ "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).

⁸⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁸⁸ *Egan*, 484 U.S. at 531

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.”⁸⁹ 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. As noted above, there was nothing unusual about Applicant’s finances until about 2002. In March 2002, Applicant filed for bankruptcy. In 2004, Applicant was found unfit for further military service and discharged with severance pay with a 20 percent disability rating. At some point thereafter, he failed to keep up with his monthly payments, and accounts started to become delinquent. Some accounts were placed for collection, and some accounts were 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

⁸⁹ See Exec. Or. 10865 § 7.

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.”⁹⁰ Also, AG ¶ 20(e) may apply where “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.”

Applicant’s initial financial problems commenced sometime in 2002, when without Applicant’s knowledge or permission, his mother started opening credit cards in Applicant’s name, and she used those credit cards to pay for her purchases and expenses. When Applicant’s mother was too sick to continue working, she went on disability and was unable to continue making the monthly payments on the accounts. Those actions by her occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant’s current reliability, trustworthiness, or good judgment. After leaving active duty, and for the next several years, Applicant held a series of low-paying, part-time and temporary positions until he could obtain a professional position. He also went through two periods of unemployment, and was homeless for periods in 2004 and 2005, forced by circumstances to live in his car or in a hotel for varying periods. He joined his current employer in September 2008. Considering the depth of Applicant’s financial difficulties during that period, and his subsequent efforts in attempting to regain financial stability, his financial problems are unlikely to recur and, likewise, do not cast doubt on his current reliability, trustworthiness, or good judgment.⁹¹ AG ¶ 20(a) applies.

AG ¶ 20(b) applies because there were several conditions, largely beyond Applicant’s control, that made a substantial negative effect on Applicant’s financial situation. His mother’s actions obviously created substantial financial hardship for Applicant. After leaving active duty, Applicant held a series of low-paying, part-time and temporary positions and went through periods of unemployment and homelessness.

⁹⁰ 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)).

⁹¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

These events were clearly beyond Applicant's control, and Applicant eventually acted responsibly to address the debts that resulted.

AG ¶ 20(c) partially applies because Applicant received an unusual form of financial counseling, by attending a course in business finance in pursuit of his degree and reading a library book about personal finance. He considers his financial knowledge to have been attained primarily through "self-education." Nevertheless, there is clear and abundant evidence that Applicant's financial problems are being resolved and are under control. While he still has delinquent accounts, he has established a budget, presented a personal financial statement, and is following his repayment plans in reducing his delinquencies.

AG ¶ 20(d) applies because Applicant attempted to address his delinquent debts before the SOR was issued. Circumstances were such that he was previously unable to resolve them all either by settling them or by paying them off, although he attempted to do so.⁹² He has paid off, settled, or otherwise resolved accounts with several creditors, including some non-SOR creditors, and is currently active with repayment plans for the remaining creditors. Moreover, Applicant is making payments on an account with DFAS, which will likely be refunded to him once his disability issue is resolved.

AG ¶ 20(e) partially applies because Applicant was not morally (and possibly not legally) responsible for the issues created by his mother before his 2002 bankruptcy. He disputed the DFAS account by filing an appeal with AFBCMR. In September 2010, the medical advisor to the AFBCMR determined the method used by the U.S. Air Force in calculating Applicant's disability rating was incorrect and at odds with the Veterans Administration Schedule for Rating Disabilities when making rating determinations. The medical advisor recommended an adjustment of the disability rating to 60 percent, making Applicant eligible for a medical disability retirement. To date, a decision has not been issued by AFBCMR.

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

⁹² "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.

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. Applicant has a history of financial delinquencies commencing in 2002. In 2004, he permitted accounts to become delinquent and placed for collection or charged off.

The mitigating evidence under the whole-person concept is substantial. Applicant's initial financial delinquencies were the unfortunate consequence of his mother's actions. His subsequent financial difficulties arose because of his periods of unemployment and underemployment. Applicant eventually addressed the situation and took low-paying, part-time, and temporary jobs as well as his new permanent position. He did not turn his back on his creditors. Instead, he has paid off or settled, or otherwise resolved accounts with several creditors, including some non-SOR creditors, and is currently active with repayment plans for the remaining creditors. 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.⁹³ His substantial good-faith efforts are sufficient to mitigate continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁹⁴

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

⁹³ 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).

⁹⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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.

Overall, the record evidence leaves me with no questions or 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.

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 |
| Subparagraph 1.h: | For Applicant |
| Subparagraph 1.i: | For Applicant |
| Subparagraph 1.j: | For Applicant |
| Subparagraph 1.k: | For Applicant |
| Subparagraph 1.l: | For Applicant |
| Subparagraph 1.m: | For Applicant |
| Subparagraph 1.n: | For Applicant |
| Subparagraph 1.o: | 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