



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



In the matter of:)
)
-----) ISCR Case No. 09-04519
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

April 8, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance or access to classified information is denied.

Statement of the Case

On March 18, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application (hereinafter SF 86).¹ On a subsequent unspecified date in 2009, the Defense Office of Hearings and Appeals (DOHA) furnished him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on August 14, 2009.² On November 5, 2009, DOHA 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

¹ Item 5 (SF 86), dated March 18, 2009.

² Item 6 (Applicant's Answers to Interrogatories, dated August 14, 2009).

(January 2, 1992), as amended and modified (Directive); and *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (hereinafter 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, and 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 November 10, 2009. In a sworn, written statement, dated November 16, 2009, 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 file of relevant material (FORM) was provided to Applicant on December 28, 2009, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on January 6, 2010, and no submission was made by the February 5, 2010, deadline. The case was assigned to me on March 22, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a. through 1.e., 1.g., 1.i. through 1.l., and 1.o. through 1.q. of the SOR, and denied the remaining allegations, claiming they were duplicates of other allegations.

Applicant is a 46-year-old employee of a defense contractor, currently serving as an analyst,³ and he is seeking to obtain a security clearance. He was previously granted a SECRET security clearance in August 2001.⁴ He received a bachelor's degree in an unspecified discipline in December 1988.⁵ He served honorably on active duty, in an enlisted status, with the U.S. Army from May 1998 until May 2002.⁶ Upon his discharge, from May 2002 until June 2003, he briefly held a variety of positions in the private or public sector, including quality assurance scientist, science teacher, and quality control scientist.⁷ Applicant held a permanent corporate position in research and development from June 2003 until February 2009, when he was laid off.⁸ Following a two-month period of unemployment (February-March 2009), he was hired by his current employer.⁹

³ Item 5, *supra* note 1, at 1.

⁴ *Id.* at 11.

⁵ *Id.* at 3.

⁶ *Id.* at 6.

⁷ *Id.* at 4-5.

⁸ *Id.* at 4.

⁹ *Id.* at 3-4.

Applicant and his wife were married in 1986, and they have two children, born in 1987 and 1989, respectively, all of whom reside together.¹⁰

Financial Considerations

There was nothing unusual about Applicant's finances until about 2007, when his employer, at that time, reduced his hours and cut overtime.¹¹ As his hours were reduced, Applicant made a decision to focus on certain accounts such as residence, automobile, food, utilities, and medical, to the exclusion of his credit cards.¹² In September 2007, he entered into a debt consolidation agreement with a nonprofit organization offering credit counseling and debt management services.¹³ Commencing in November 2007, and continuing until June 2008, he made monthly \$600 payments towards reducing his delinquent debt.¹⁴ At some point, one of the creditors withdrew from the debt consolidation arrangement, and Applicant cancelled further payments, contending he could not continue them while making separate payments to the one creditor.¹⁵ He eventually sought to resume making debt consolidation payments but the company he had been dealing with declined to assist him "at this time."¹⁶

After his brief period of unemployment, Applicant secured another position, but his new salary was only \$19.50 per hour compared to his previous salary of \$24 per hour.¹⁷ Applicant considered obtaining a home equity loan, but his mortgage holder indicated there was a requirement that he first be in a permanent position for six months.¹⁸ Applicant has been in his position since March 2009, but there is no evidence that he ever reapplied for the home equity loan once he became eligible to do so. His loosely envisioned repayment plan is to eventually refinance his home and pay off his delinquent debts as well as his car in about two years.¹⁹ His alternate plan is to enter into a more affordable debt consolidation program.²⁰ His current practice is apparently to look to the future but do nothing now.

¹⁰ *Id.* at 7-8.

¹¹ Item 6 (Personal Subject Interview, dated May 12, 2009), at 1, attached to Response to Financial Interrogatories, dated August 14, 2009.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 3.

²⁰ *Id.*

Applicant and his wife no longer use credit cards.²¹ He acknowledges the delinquent accounts appearing in his April 2009 credit report,²² but denies routine contact with his creditors unless they call him or send him “an offer letter.”²³ He has not submitted a personal financial statement to reflect a monthly income, expenditures, or possible net remainder available for discretionary spending.

The SOR contained allegations pertaining to 17 delinquent accounts, totaling approximately \$72,050. While Applicant contends some of the accounts alleged in the SOR duplicate others (e.g., ¶¶ 1.a. and 1.n., ¶ 1.f. and 1.k., and ¶¶ 1.h. and 1.j.), an examination of the account numbers and transfer statements appearing in the credit reports does not support his contentions. All of the accounts had been placed for collection with a variety of collection agents, and eight of the accounts had been charged off. Applicant also contends he has paid one of the accounts (¶ 1.m., a mobile telephone account, in the amount of \$348, which was settled).²⁴ He also claims he is currently making payments on three or possibly four other accounts. However, he has furnished no evidence, such as cancelled checks, copies of money orders, receipts, or creditor acknowledgments, to corroborate his payment claims.

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.”²⁵ 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.”²⁶

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

²¹ *Id.*

²² Item 7 (Combined Credit Report (Experian, Trans Union, and Equifax), dated April 1, 2009).

²³ Item 6, *supra* note 11, at 3.

²⁴ Item 4 (Answer to SOR, dated November 16, 2009), at 3; Item 8 (Equifax Credit Report, dated August 21, 2009), at 3.

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

conditions, which are useful 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."²⁷ 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.²⁸

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."²⁹

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."³⁰ 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 not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In

²⁷ "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).

²⁸ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁹ *Egan*, 484 U.S. at 531

³⁰ *See* Exec. Or. 10865 § 7.

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 2007, when his hours were reduced and his overtime cut. Applicant made a decision to focus on certain accounts to the exclusion of his credit cards. After two months of unemployment, he secured another position, but with a lower salary than before. Nevertheless, accounts became delinquent and his liabilities increased to over \$70,000. Because of the absence of financial data to reflect a monthly income, expenditures, or possible net remainder available for discretionary spending, it is impossible to determine Applicant's ability to address his delinquent debts. 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.”³¹

Applicant’s financial situation started to deteriorate in 2007, when his hours were reduced and his overtime, cut. He was eventually laid off and was unemployed for two months in February-March 2009. Nevertheless, despite securing another position, albeit with a lower salary, he continued to accumulate substantial delinquent debt, even while prioritizing payments. The evidence fails to establish AG ¶ 20(a). The most recent declaration of intent by Applicant was made during his interview in May 2009. His loosely envisioned repayment plans are (1) eventually refinance his home and pay off his delinquent debts as well as his car in about two years; (2) enter into a more affordable debt consolidation program; or (3) look to the future but do nothing now. He has followed the path of the third option, and denies routine contact with his creditors.

Applicant’s continuing delinquent debts constitute “a continuing course of conduct” under the Appeal Board’s jurisprudence.³² The unemployment circumstances have not been present since March 2009, and he has been gainfully employed. Nevertheless, his refusal or inability to address his financial delinquencies more effectively since 2007, despite being unemployed for only two months, raises concerns about recurrence of delinquent debts and his current reliability, trustworthiness, or good judgment. AG ¶ 20(b), only partially applies because his financial situation was initially caused by reduced salary and a brief period of unemployment, but there is little evidence that Applicant acted responsibly under the circumstances.³³

While there is some unsubstantiated evidence to indicate Applicant received counseling in handling his finances, or guidance on how to address his financial delinquencies, as well as some unsubstantiated evidence that he initiated a brief effort in 2007-2008 to repay some creditors or otherwise resolve some of his debts, there is

³¹ 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)).

³² See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)).

³³ “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)).

no evidence to reflect actual payments under any such arrangement. The evidence fails to establish AG ¶ 20(c) or AG ¶ 20(d).

Considering Applicant's extensive continuing financial delinquencies, as well as the absence of financial data to reflect a monthly income, expenditures, or possible net remainder available for discretionary spending, Applicant has not demonstrated his financial responsibility.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

There is some evidence in favor of mitigating Applicant's conduct. When these problems first began, Applicant's hours were reduced and his overtime cut. He was eventually laid off and was unemployed for two months. There is unsubstantiated evidence regarding financial counseling, a repayment plan and repayment efforts. There is evidence that one of his debts was actually settled and resolved.

The disqualifying evidence under the whole-person concept is more substantial. While the reduced salary and brief unemployment were circumstances beyond his control, Applicant continued to obtain services and goods from a wide variety of creditors, but either had no ability or intention to pay for them. As a result, he continued to accumulate extensive delinquent debt. (See AG ¶ 2(a)(1) and AG ¶ 2(a)(2).) Applicant has been gainfully employed since March 2009. Nevertheless, since that time, he refused to make any good-faith efforts to pay a variety of delinquent debts. He made no efforts to arrange repayment plans. Instead, he preferred to wait and consider some loosely envisioned repayment options. (See AG ¶ 2(a)(6), AG ¶ 2(a)(7), and AG ¶ 2(a)(9).) While these debts may eventually be paid off, his failure to repay creditors in a more timely manner, or even make efforts to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

Of course, the issue is not simply whether all his debts are resolved or at least under repayment arrangements; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light, 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.³⁴ The absence of any reasonable good-faith efforts or any evidence to reflect actual payments are sufficient to raise continuing security concerns. (See AG ¶ 2(a)(1).)

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³⁵

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has " . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate 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:

³⁴ 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).

³⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge