



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-02472

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

06/26/2012

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On November 4, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On October 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to the interrogatories on November 16, 2010.² On April 5, 2011, 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* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative*

¹ Item 5 (SF 86), dated November 4, 2009.

² Item 6 (Applicant's Answers to Interrogatories, dated November 16, 2010).

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 September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA was unable to find 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 as to when Applicant received the SOR, and there is no explanation in the file as to why another copy of the SOR was sent to him, re-dated December 7, 2011. Nevertheless, Applicant acknowledged receipt of the second SOR on December 27, 2011. In a sworn statement, dated January 11, 2012, Applicant responded to the SOR allegations.³ In a subsequent e-mail, he elected to have his case decided on the written record in lieu of a hearing.⁴ A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on April 2, 2012, 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 April 12, 2012, but as of June 21, 2012, he had not submitted any information or documents. The case was assigned to me on June 21, 2012.

Findings of Fact

In his Answer to the SOR, Applicant admitted nine (¶¶ 1.a. through 1.e., and 1.g. through 1.j.) of the factual allegations pertaining to financial considerations of the SOR. Although he denied the remaining two allegations (¶¶ 1.f. and 1.k.), he based his denials on his contention that one was actually a duplicate of another account listed in the SOR, and one may have been reported in error. 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 41-year-old employee of a defense contractor.⁵ He served with the U.S. Navy from September 1989 until December 1990, and was discharged with a General Discharge Under Honorable Conditions.⁶ He has never held a security clearance.⁷ It is unclear if Applicant graduated from high school, as his SF 86 is silent in

³ Item 4 (Applicant's Answer to the SOR, dated January 11, 2012).

⁴ Item 4 (E-mail, dated January 25, 2012). Applicant was the subject of a criminal investigation conducted by the U.S. Naval Investigative Service (NCIS) in early 1990, and he admitted stealing money from the wallet and locker of two other individuals in violation of Article 121, Uniform Code of Military Justice (UCMJ). See Item 9 (NCIS Report of Investigation, dated March 7, 1990). The connection between his actions and the characterization of his eventual discharge was not further explained.

⁵ Item 5, *supra* note 1, at 18-19.

⁶ Item 5, *supra* note 1, at 39-40.

⁷ Item 5, *supra* note 1, at 57.

that regard. He attended a vocational, technical, or trade school from November 2000 until April 2001, and received certifications as a Microsoft Certified Solutions Associate and a Microsoft Certified Solutions Expert.⁸ Applicant has held a variety of positions with different employers over the years. He was a technician from July 1997 until April 2003, an IT manager from May 2003 until May 2004, a field systems engineer from May 2004 until October 2005, a network engineer from October 2005 until March 2006, an IT manager from March 2006 until August 2007, a network monitor technician from October 2007 until December 2007, a network technician from February 2008 until April 2008, a, IT systems specialist from April 2008 until September 2008, a data technician and then an install technician from September 2008 until January 2009, a data technician from January 2009 until February 2009, an IT manager from June 2009 until September 2009, a self-employed team lead in October 2009, and a part-time court runner and office clerk from September 2009 until November 2009. He was also unemployed from December 2007 until February 2008.⁹ He joined his current employer in November 2009 in an unspecified position as “federal contractor.”¹⁰

Applicant was married in April 1997 and divorced in September 2007.¹¹ He married his second wife in December 2007 and they divorced in August 2009.¹² Except for a comment in November 2010 about a “newborn son,”¹³ the record is silent regarding children.

Financial Considerations

There apparently was nothing unusual about Applicant’s finances until 2004. He attributed his financial problems to “low compensatory employment, poor money management, his failed marriage, and/or his initial unawareness of the debt.”¹⁴ He has held several odd or low-paying jobs since 2004, and although he tried to be frugal, his expenses “exponentially” increased and surpassed his income.¹⁵ During 2007 and 2008, he admitted he was “living beyond [his] means.”¹⁶ He experienced periods of unemployment, his wife was spending too much money, and he moved out of state for personal reasons.¹⁷ As a result, accounts started to become delinquent, and were placed for collection or charged off.¹⁸

⁸ Item 5, *supra* note 1, at 17.

⁹ Item 5, *supra* note 1, at 18-37.

¹⁰ Item 5, *supra* note 1, at 18.

¹¹ Item 5, *supra* note 1, at 44-45.

¹² Item 5, *supra* note 1, at 43-44.

¹³ Item 6 (Applicant’s Answers to Interrogatories), *supra* note 2, at 108.

¹⁴ Item 6 (Personal Subject Interview, dated December 10, 2009), at 5.

¹⁵ Item 6 (Personal Subject Interview), *supra* note 14, at 5.

¹⁶ Item 4 (Applicant’s Answer to the SOR), *supra* note 3, at 2.

¹⁷ Item 4 (Applicant’s Answer to the SOR), *supra* note 3, at 2.

In November 2010, Applicant submitted a personal financial statement reflecting a net monthly income of \$2,631.92.¹⁹ He claimed \$2,325 in monthly expenses, as well as zero debt payments.²⁰ He had \$396.92 left over each month for discretionary spending or savings.

In December 2009, Applicant indicated he would contact his creditors or collection agencies to determine his financial responsibilities and satisfy his debts in full by the end of 2012.²¹ He stated he had no intention of filing for bankruptcy, and contended his present financial situation was stable and improved.²² As of December 2009, Applicant had not sought any financial counseling.²³ In November 2010, he admitted he had not made payment arrangements because his financial situation had changed, making it “currently impossible.”²⁴ He was also considering the possibility of bankruptcy.²⁵

The SOR identified 11 purportedly continuing delinquencies, totaling approximately \$50,880. A closer review and analysis of the SOR allegations and Applicant’s credit reports reveals that four of the accounts reflected in the SOR (SOR ¶¶ 1.d., 1.e., 1.h., and 1.k.) are actually the same account, simply under different creditor or collection agent names, with different account numbers, in different stages of collection.²⁶ The account, regardless of which creditor or collection agent is identified, has not been addressed or resolved. None of the remaining accounts listed in the SOR, as well as in the various credit reports, have been addressed or resolved.²⁷ Applicant

¹⁸ Item 8 (Combined Experian, TransUnion, Equifax Credit Report, dated November 14, 2009); Item 7 (Equifax Credit Report, dated November 30, 2010); Item 7 (Equifax Credit Report, dated March 15, 2011).

¹⁹ Item 6 (Personal Financial Statement, dated November 15, 2010), attached to Applicant’s Answers to Interrogatories.

²⁰ Item 6 (Personal Financial Statement), *supra* note 17.

²¹ Item 6 (Personal Subject Interview), *supra* note 14, at 1-6.

²² Item 6 (Personal Subject Interview), *supra* note 14, at 6.

²³ Item 6 (Personal Subject Interview), *supra* note 14, at 6.

²⁴ Item 6 (Applicant’s Answers to Interrogatories), *supra* note 2, at 108.

²⁵ Item 6 (Applicant’s Answers to Interrogatories), *supra* note 2, at 108.

²⁶ Special attention was focused on the following sources: Item 8, wherein TransUnion lists an account with a national department store as 150 days past due with a balance of \$5,903 (at 10), as listed in SOR ¶ 1.k.; Equifax lists an account with a furniture store with a balance of \$5,093 as 180 days past due and charged off (at 5), as listed in SOR ¶ 1.d.); Item 7 (2010 credit report), wherein Equifax lists one account with the same furniture store in the amount of \$5,093 that was charged off (at 1), as listed in SOR ¶ 1.d.); and separately with a collection agent with a high credit of \$5,903 and a balance of \$7,341 (at 1), as listed in SOR ¶ 1.h.; Item 7 (2011 credit report), wherein Equifax lists one account with the same furniture store in the amount of \$5,093 that was charged off (at 1), as listed in SOR ¶ 1.d.); and separately with a collection agent with a high credit of \$7,295 and an unpaid balance of \$7,453 (at 1), as listed in SOR ¶ 1.e.

²⁷ Item 4 (Applicant’s Answer to the SOR), *supra* note 3, at 1-2.

claims he has attempted to contact some creditors, has e-mailed other creditors, or is working on payment arrangements with other creditors, but he has submitted no documentary evidence to support his claims. There is no evidence that Applicant made any effort to resolve these accounts, and they remain unresolved.

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.”²⁸ 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.”²⁹

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.”³⁰ 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,

²⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁰ “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).

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.³¹

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."³²

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."³³ 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. . . .

³¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³² *Egan*, 484 U.S. at 531

³³ See Exec. Or. 10865 § 7.

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. Commencing as early as 2004, and intensifying in 2007 and 2008, Applicant found himself unable to continue making his monthly payments. His accounts started becoming delinquent and were placed for collection, charged off, or sold to other collectors. His financial difficulties remain unresolved. 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.”*³⁴

AG ¶¶ 20(a), 20(c), and 20(d) do not apply. The nature, frequency, and relative recency of Applicant’s continuing financial difficulties since 2004 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” There is no evidence to indicate Applicant has ever received counseling in money management, debt management, debt repayment, or budgeting. There is no evidence to indicate that Applicant initiated a good-faith effort to repay his overdue creditors or otherwise resolve his debts. Applicant’s continuing statements regarding his future intent to resolve his debts, without corroborating documentary evidence, are entitled to little weight.³⁵ His declaration of future intention to resolve his debts, after so much time where no positive efforts were taken, does not qualify as a “good-faith” effort.

³⁴ 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)).

³⁵ See ISCR Case No. 07-10310 at 2 (App. Bd. Jul. 30, 2008).

AG ¶ 20(b) partially applies. Applicant attributed his financial problems to “low compensatory employment, poor money management, his failed marriage, and/or his initial unawareness of the debt.” But, he also admitted he was “living beyond [his] means” in 2007 and 2008. He experienced periods of unemployment, his wife was spending too much money, and he moved out of state for unexplained personal reasons. While some of those reasons were largely beyond Applicant’s control (e.g., loss of employment, divorce, and separation), it is difficult to conclude that Applicant acted responsibly under the circumstances.³⁶

In light of his substantial period of continuing financial problems, it is unlikely that they will be resolved in the short term, and they are likely to continue. Accordingly, Applicant failed to mitigate the security concerns under financial considerations, and under the circumstances, his actions do cast doubt on his current reliability, trustworthiness, and good judgment.³⁷

Whole-Person Concept

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

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³⁸

³⁶ “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.

³⁷ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

³⁸ 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).

There is some evidence in favor of mitigating Applicant's conduct: His financial difficulties were caused, in part, because of low salaries, unemployment, and a failing marriage.

The disqualifying evidence under the whole-person concept is more substantial. Applicant's financial difficulties were also caused, in part, by living beyond his means in 2007 and 2008. Applicant claimed he attempted to contact some creditors, e-mailed other creditors, or was working on payment arrangements with other creditors. He failed to submit any documentary evidence to support his claims, and there is no evidence that Applicant made any effort to resolve these accounts, and they remain unresolved.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³⁹

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.

In this instance, Applicant has offered little evidence of efforts, other than promises, to resolve his delinquent debts, and his "meaningful track record" is not a satisfactory one. He has discussed bankruptcy before, and still entertains that possibility. Applicant could have made some reasonable timely efforts to resolve his accounts, but he has not done so. Applicant's actions indicate poor self-control and a lack of judgment, which raise questions about his reliability, trustworthiness and ability to protect classified information. 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:

³⁹ 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: | For Applicant (See ¶ 1.d.) |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | For Applicant (See ¶ 1.d.) |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | For Applicant (See ¶ 1.d.) |

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