



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



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| In the matter of: |) | |
| |) | |
| XXXXXXXXXXXX, XXXXX |) | ISCR Case No. 11-03133 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: David T. Weisbrod, Esquire

11/26/2013

Decision

Tuider, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges five delinquent debts, totaling \$562,072, false statements in a security context, and termination from employment for cause. Due to circumstances beyond his control, he had insufficient financial resources to pay his debts. He settled and paid one debt, and the other four were resolved through short sales. He did not intentionally mislead the Government in his security documentation. Financial considerations and personal conduct concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On October 1, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (GE 1). On January 31, 2013, the Department of Defense (DOD) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations) and E (personal conduct). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

On April 3, 2013, Applicant responded to the SOR, and he gave indications he wanted a hearing. On June 11, 2013, Department Counsel indicated she was ready to proceed on Applicant's case. On June 21, 2013, the Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On June 11, 2013, DOHA issued a hearing notice, setting the hearing for August 2, 2013. Applicant's hearing was held as scheduled.

At the hearing, Department Counsel offered 10 exhibits, and Applicant offered 14 exhibits. (Tr. 22-23; GE 1-10; AE A-N) There were no objections, and I admitted GE 1-10 and AE A-N. (Tr. 22-23) The record was held open after the hearing until September 18, 2013 for additional evidence. On August 12, 2013, DOHA received the transcript of the hearing. On September 18, 2013, Department Counsel provided 10 documents from Applicant, which were admitted into evidence without objection. (AE O-AA)

Findings of Fact

In his Answer to the SOR, Applicant denied all of the SOR allegations.¹ He also provided extenuating and mitigating information. His admissions are accepted as findings of fact.

Applicant is a 35-year-old mechanical engineer, who works for a defense contractor providing base operations services. (Tr. 27-28, 56, 58, 60-61; GE 1) He graduated from high school in 1996, and he was awarded a bachelor's degree in mechanical engineering in 2003. (Tr. 57, 119; GE 1) He never served in the military. (GE 1) He never married, and he does not have any children. (Tr. 91-92; GE 1) He has never been arrested or convicted of a crime. (Tr. 57) He has had access to classified information for three years. (Tr. 93) There are no allegations of security violations, and he has not been disciplined by his employer. (Tr. 61-62)

Financial Considerations

In 2005, Applicant decided to invest in real estate with his mother. (Tr. 57, 62-63) Applicant did not have any financial or real estate training. (Tr. 113) Applicant purchased three duplexes and one triplex that were located near each other for a total of about \$660,000. (Tr. 63-64, 109) He paid \$60,000 and borrowed the rest. (Tr. 95-96) Applicant's mother did not contribute towards the down payment. (Tr. 115) Applicant and his mother co-signed on the loans. (Tr. 64) He had to take out private mortgage

¹His answer to the SOR did not include an answer to SOR ¶¶ 2.d and 2.e. (Tr. 10) He denied intentionally attempting to mislead the Government on his SF 86, and he admitted being terminated from employment, but he asserted the termination was unjustified. (Tr. 11-12)

insurance (PMI) because he did not make a sufficient down payment (usually 20 percent) to satisfy the mortgage company. (Tr. 96) His mortgage payments on the rental properties totaled about \$4,500 each month. (Tr. 109) Applicant also purchased the home where he lived, and the two mortgage debts in SOR ¶ 1.d (\$68,112) and ¶ 1.e (\$124,800) financed the purchase of his personal residence. (Tr. 64-65, 98-100)

Applicant had a negative cash flow on the rental properties because they were vacant or the tenants did not pay their rent. (Tr. 38-39, 50, 66, 114) He withdrew about \$20,000 from his IRA accounts to make payments on his mortgages. (Tr. 68) He began to miss payments on the mortgages in 2009. (Tr. 111) Later, he made some payments and tried to get caught up on his payments. (Tr. 112) The value of the properties decreased, and their fair market value fell below the amount of their mortgages. (Tr. 114-115) He considered abandoning the properties or filing for bankruptcy; however, he chose to take a harder, more responsible route to debt resolution. (Tr. 40, 53, 70)

Applicant hired lawyers and utilized real estate agents to generate short sales. (Tr. 71) The banks initiated foreclosures; however, the foreclosures were dismissed after three short sales. (Tr. 39, 43, 50, 72, 100) He provided proof of resolution for the debts in the SOR as follows: ¶ 1.a (\$199,160) (GE 10-12; AE C, P, Z, AA, BB); ¶ 1.b (\$149,000) (GE 8, 9; AE P, W, X, Y); ¶ 1.d (\$68,122) (GE 4, 5; AE P); and ¶ 1.e (\$124,800) (AE B, H, P, Q, R). There were no deficiency judgments executed against Applicant or his mother. (Tr. 72) Three short sales resolved the debts in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. (Tr. 100-101, 118; AE G, H) He received one 1099 form, which he provided to DOHA. (Tr. 107-108; GE 4)

A PMI debt for \$21,000 was settled and paid, using \$5,000 of Applicant's cash, a \$5,000 loan from his fiancé, and a \$5,000 loan from his father. (Tr. 43-44, 101; SOR ¶ 1.c; GE 6; AE P, S, V) He repaid the loans from his father and his fiancé. (Tr. 44)

Applicant drives a 2002 Toyota, and he only has one credit card. The balance on his credit card is about \$7,000 and that account is current. (Tr. 59-60, 94) He does not owe any personal loans. (Tr. 60) His gross annual income is about \$60,000.

Personal Conduct

When Applicant completed his October 1, 2010 SF 86, he disclosed that he went to Thailand for 14 days in 2008. (GE 1) He also disclosed his travel to other foreign countries on his SF 86. (GE 1) He has not traveled outside the United States since his 2008 trip to Thailand. (Tr. 101)

When Applicant completed his October 1, 2010 SF 86, he answered, "No" in response to financial questions in section 26 about: property being repossessed (26.b); defaulting on any loan (26.f); debts over 180 days delinquent in the previous seven years (26.m), and debts currently delinquent over 90 days (26.n). (GE 1; SOR ¶ 2.b) His answer with respect to foreclosures was correct because no foreclosure judgments had been entered against Applicant. (Tr. 77-78) He knew the mortgages were in litigation

status or that he was working with the banks; he was unsure of the legal status of his mortgages; and he chose to answer “No” to all of the financial questions. (Tr. 79, 117)

When Applicant completed his October 1, 2010 SF 86, he disclosed the following employments: from January 2003 to April 2008 with company C (13A.4); from May 2008 (estimated) to May 2010 (estimated) with company T (13A.3); from May 2010 to June 2010 with company C (13A.2); and from July 2010 to the present with his current employer (13A.1). (GE 1) He disclosed that he was fired from company C in April 2008 (13C.1). (Tr. 83; GE 1)² SOR ¶ 2.c alleges he failed to disclose unemployment from May 2008 to June 2008 in response to question 13A, and part-time employment with company W from October 2008 to February 2009. (GE 1) SOR ¶ 2.d alleges he failed to disclose that he was “laid off” from company W in February 2009. (GE 1)

Applicant explained that he failed to disclose his employment with company W on his SF 86 out of an oversight or carelessness. (Tr. 80) On his 2008 and 2009 federal income tax returns, he disclosed his income and employment as a mechanical engineer with company W. (Tr. 80-82; AE M, N) His work with company W was unrelated to his primary employment with the Government contractor. (Tr. 82-83) He was laid off from employment with company W because business was slow and he was a part-time employee. (Tr. 85)

On November 23, 2010, an Office of Personnel Management (OPM) investigator interviewed Applicant, who disclosed that he knew Mr. P and visited him in Thailand in 2008. (Tr. 75; GE 3 at 6) Applicant met Mr. P when they worked together at an island in the Pacific. (Tr. 75) His visit with Mr. P in Thailand was for social purposes and not based on his employment. (Tr. 76) Applicant traveled to several foreign countries over the years. (Tr. 77) He also disclosed his part-time employment with company W. (Tr. 85-86)

On August 3, 2012, Applicant responded to DOHA interrogatories. (SOR ¶ 2.a; GE 9) He disclosed the name of an acquaintance, Mr. P, who lives in Thailand. (GE 9) He said he had hundreds of contacts with Mr. P, as they used to work together, and they were friends “many years ago”; however, he erroneously left question 13 blank, which asks about foreign contacts. (GE 9) He also responded “No” to question 11 about whether he had a friend or associate who lives in a foreign country. (Tr. 73-74, 102; GE 9) He maintained a social relationship with P after leaving Thailand by occasionally talking to him on the telephone or over a social network. (Tr. 103)

If answering the same questions today, Applicant would disclose the information about his delinquent mortgages, part-time employment, and contact with his friend, who lives in Thailand. (Tr. 79, 87, 117) Applicant denied that he intended to deceive the Government about these issues on his SF 86. (Tr. 79, 87)

²SOR ¶ 2.e indicates that Applicant was terminated from company C “for cause” in April 2008. Applicant explained he had a disagreement with his supervisor, and he was rehired in May 2010. (Tr. 84) He denied that the termination from employment with company C in April 2008 was for misconduct or for the quality of his work. (Tr. 87-88)

Character Evidence

Applicant's fiancé and Applicant plan to marry in May 2014. (Tr. 37) They met in December 2006. (Tr. 38, 54) She paid for their home in cash using her inheritance, and there is no lien on it. (Tr. 38, 49) She was a foreclosure attorney from 2008 to 2011. (Tr. 39, 53) She described Applicant as a rational, honest, responsible, and trustworthy person, who does not abuse alcohol or illegal drugs. (Tr. 39-55)

An employee of the contractor has known Applicant or worked with him for 10 years. (Tr. 26-27, 33) For the last three years, he has been Applicant's immediate supervisor. (Tr. 27) He described Applicant's work performance as above average to excellent. (Tr. 28) Applicant is personable, honest, knowledgeable, professional, compliant with rules, trustworthy, and loyal. (Tr. 30-34) He has high confidence in Applicant, and no concerns about Applicant's access to classified information. (Tr. 30-32)

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." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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." See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about 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.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "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). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue her security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the

burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in his credit reports, OPM interview, SOR response, and statement at his hearing.

Applicant's debts became delinquent in 2009. Applicant's SOR alleges five delinquent mortgage debts, totaling \$562,072. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) 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;

(b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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 conduct in resolving his debts warrants full application of AG ¶¶ 20(a) to 20(d). AG ¶ 20(e) is not applicable. Applicant did not dispute any of his SOR debts. The unexpected decline in value of real estate and failure of his tenants to pay their rent in full and on time caused Applicant to have debts he could not afford to pay. His financial problems were affected by circumstances largely beyond his control. He made \$20,000 in payments from his 401k accounts; however, he was unable to keep the mortgage accounts current. He arranged four short sales and paid \$15,000 to settle one PMI debt. His SOR debts are all resolved, and his only debt, a credit card account, is now current.³

³ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially

The Appeal Board explained that circumstances beyond one's control can cause unresolved debt, and are not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Applicant admitted responsibility for and took reasonable and responsible actions to resolve his SOR debts, establishing some good faith.⁴ He established and maintained contact with his creditors.⁵ He used his limited resources to settle and pay one \$15,000 debt, and he took reasonable actions to resolve the four mortgage debts through short sales. His financial problem is resolved, and his finances are under control. Applicant has learned from his financial mistakes, they are unlikely to recur; and they do not cast doubt on his current reliability, trustworthiness, or good judgment. His efforts are sufficient to fully mitigate financial considerations security concerns.

responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

⁴The 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) 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)).

⁵Even 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.

Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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

AG ¶ 16 describes four conditions that could raise a security concern and may be disqualifying with respect to the alleged falsifications of documents used to process the adjudication of Applicant's security clearance in this case:

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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;⁶

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

⁶The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

(a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)).

- (1) untrustworthy or unreliable behavior . . . ;
 - (2) . . . inappropriate behavior in the workplace;
 - (3) a pattern of dishonesty or rule violations; or
 - (4) evidence of significant misuse of Government or other employer's time or resources; and
- (e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

I find Applicant's statements explaining why he did not provide derogatory financial information about his delinquent mortgages, did not provide complete employment information, and did not provide complete and correct information about his friendship with Mr. P, a resident of Thailand, to be credible. His omissions and misstatements were errors made through carelessness and oversights. He refuted the allegations that he intentionally falsified his October 1, 2010 SF 86 and provided incorrect and incomplete information in his responses to DOHA interrogatories. He regrets his mistakes, and he would not make the same mistakes today.

SOR ¶ 2.e indicates Applicant left his employment with company C in April 2008 for cause. He left the employment because of a disagreement with his supervisor, was subsequently rehired by the same company that terminated him, and his supervisor for the last three years lauds his diligence and contributions to the company. This allegation does not meet the threshold requirement for AG ¶¶ 16(d) or 16(e).

AG ¶ 17 provides three conditions that could mitigate security concerns in this case:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

AG ¶ 17(a) applies to the allegations in SOR ¶¶ 2.b to 2.d. Applicant did not provide derogatory financial information about his delinquent mortgages, and he did not provide complete employment information on his October 1, 2010 SF 86. He discussed the missing information on his November 23, 2010 follow-up OPM investigative interview.

In the instant case, Applicant disclosed the omissions, and he fully cooperated with the investigator's follow-up interrogation. Applicant's failure to provide derogatory financial information about his delinquent mortgages and his failure to provide complete employment information on his October 1, 2010 SF 86 were improper. He failed to disclose this information out of carelessness and not with the intent to deceive the Government. He disclosed the missing information during his November 23, 2010 OPM interview. He corrected the omission, concealment, or falsification in good faith. His disclosure of the information eliminated any vulnerability to exploitation, manipulation, or duress. Guideline E concerns are mitigated; however, assuming AG ¶¶ 17(a), 17(e), and 17(f) are not applicable, security concerns are separately mitigated under the whole-person concept, *infra*.⁷

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.

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. AG ¶ 2(c). I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 35-year-old mechanical engineer, who works for a defense contractor providing base operations services. He was awarded a bachelor's degree in mechanical engineering in 2003. He is sufficiently mature to understand and comply with his security responsibilities. He deserves substantial credit for supporting the U.S.

⁷In ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010), the applicant intentionally denied that he had private employment on his security clearance application (SCA) to conceal that employment from his employer. Fifty-one days later, ISCR Case No. 09-05655 at 5 (A.J. May 12, 2010), at his OPM interview, he "(1) corrected the omission in his SCA without first having been confronted with the facts; and (2) cooperated with the follow-up questioning by the investigator." ISCR Case No. 09-05655 at 2 (App. Bd. Aug. 24, 2010). The underlying security concern about that applicant's private employment was resolved when he resigned from that company. He also received some positive character references. The Appeal Board affirmed the mitigation of the intentional and recent falsification of his SCA under the whole-person concept without ruling on the applicability of AG ¶ 17(a).

Government as an employee of a contractor. There is every indication that he is loyal to the United States and his employer. There is no evidence that he abuses alcohol or uses illegal drugs. He has never been arrested or convicted of a crime. He has had access to classified information for three years, and there are no allegations of security violations, and he has not been disciplined by his employer. The decline in real estate values and his tenants' failure to timely pay their rent contributed to his financial woes. I give Applicant substantial credit for admitting responsibility for his delinquent debts and working aggressively to resolve them. He received strong favorable endorsements from his supervisor and fiancé. His supervisor described Applicant as personable, honest, knowledgeable, professional, compliant with rules, trustworthy, and loyal.

Applicant lacked financial resources and needed to resort to short sales to clear his mortgage debts. He borrowed money and paid his \$15,000 settlement to a PMI company. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). He only has one credit card, and it is current. His vehicle is paid off and he has no delinquent debt.

Applicant is an intelligent person, and he understands what he needs to do to establish and maintain his financial responsibility. Moreover, he established a "meaningful track record" of debt re-payment. I am confident he will maintain his financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations

and personal conduct concerns are mitigated. Eligibility for access to classified information is granted.

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

Subparagraphs 1.a to 1.e: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a to 2.e: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuider
Administrative Judge