



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



In the matter of:)
)
-----) ISCR Case No. 11-05983
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

08/28/2012

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 31, 2010, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing version of a Security Clearance Application (e-QIP).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 July 11, 2011.² On February 2, 2012, 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 Guidelines for Determining Eligibility For Access to Classified Information* (December

¹ Item 5 (e-QIP), dated December 31, 2010.

² Item 6 (Applicant's Answers to Interrogatories, dated July 11, 2011).

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.

Applicant acknowledged receipt of the SOR on February 17, 2012. In a sworn statement, dated February 28, 2012, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on April 12, 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 May 18, 2012, and timely submitted additional documents to which Department Counsel had no objections. The case was assigned to me on August 7, 2012.

Findings of Fact

In his Answer to the SOR, Applicant admitted some of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.e. of the SOR). Those admissions are incorporated herein as findings of fact. He denied the remaining allegations (§§ 1.f. through 1.j.).

Applicant is a 39-year-old employee of a defense contractor, currently serving as a maritime officer aboard a commercial vessel in the U.S. Merchant Marine. He obtained a bachelor's degree in an unspecified discipline from a maritime academy in 1998. He served as an officer in the U.S. Navy Reserve from 1999 until 2009, when he was discharged with an honorable discharge certificate. Applicant's employment history between 1998 and 1999 has not been described. He joined his current employer in 1999. Applicant was married in 1998. He and his wife have one daughter, born in 2001, and two sons, born in 1997 and 2002. It is unclear if Applicant ever held a security clearance. Department Counsel indicated that Applicant has held a top secret security clearance since 1988, but Applicant denied ever having a security clearance.

Financial Considerations

As a maritime officer in the Merchant Marine, Applicant is aboard ship six to seven months each year. He returns home for 75 to 90 days at a time. Because of his travels, Applicant's wife had control of the family finances, and, in the absence of information to the contrary, he generally assumed that they were being handled in a proper and timely manner. She had previously told him that she had an accountant help with the income taxes. There was nothing unusual about Applicant's finances until about 2006 when he was served with a notice of foreclosure. Within a period of about two weeks, Applicant discovered his wife had: opened accounts and credit cards in his name; run up accounts without paying them; failed to make monthly mortgage payments for over 15 months; and failed to file or pay state income tax for multiple

years. As a result, accounts became delinquent and were placed for collection or charged off. One account went into a pre-foreclosure status. Applicant retained an attorney to assist him in the foreclosure action, and an accountant to represent him with the state income tax issues.

When interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in February 2011, Applicant was unaware of certain accounts about which he was questioned. He stated his intention to find out more about each such account and, if it was due, to make arrangements to resolve the account. Applicant contacted all of the identified creditors, or collection agents, and made arrangements to resolve the delinquent accounts. His wife no longer has responsibility for the family finances, but because Applicant still travels extensively, he has enlisted his mother-in-law's assistance in handling them when he is away.

The SOR identified ten purportedly continuing delinquencies, totaling approximately \$44,737. Each account is described below, reflecting both the original and present status, as follows:

- (SOR ¶¶ 1.a., 1.b., 1.c., and 1.d.): These are state tax liens for the tax years 2001 through 2005, and 2007, totaling \$60,046.³ In January 2009, more than three years before the SOR was issued, Applicant and the state entered into an offer-in-compromise agreement under which, commencing in February 2009, Applicant agreed to 45 monthly payments in the amount of \$1,000, with one payment in the amount of \$144.⁴ As of June 2012, Applicant had made 36 of the 45 payments on that account.⁵ On a second offer-in-compromise, Applicant agreed to make a \$2,000 down payment and 24 monthly payments in the amount of \$500. As of June 2012, Applicant had made the down payment and 3 of the 24 payments on that account.⁶ The accounts are in the process of being resolved.
- (SOR ¶ 1.e.): This is a medical account from an unidentified medical provider with a past-due balance of \$209 that was placed for collection.⁷ Applicant located the creditor and in February 2012, paid the collection agent the entire balance.⁸ The account has been resolved.

³ The SOR erroneously refers to the creditor as the "IRS," but the creditor is actually the state office of revenue services.

⁴ Item 4 (Offer-in-Compromise Agreement, dated January 22, 2009).

⁵ Letter from the creditor, dated June 28, 2012, attached to Applicant's Response to the FORM, dated July 23, 2012.

⁶ Letter from the creditor, *supra* note 5.

⁷ Item 7 (Combined Experian, TransUnion, and Equifax credit report, dated January 26, 2011), at 7.

⁸ Letter from the collection agent, dated June 14, 2012, attached to Applicant's Response to the FORM, dated July 23, 2012.

- (SOR ¶ 1.h.): This is a dental account from an unidentified dental provider with a past-due balance of \$755 that was placed for collection with the same collection agent as above.⁹ There was apparently a snafu with the insurance, but it was resolved and the balance was paid in June 2011.¹⁰ The account has been resolved.
- (SOR ¶ 1.f.): This is a home heating oil account with an unpaid balance of \$276 that was placed for collection in 2006. Applicant contacted the creditor and paid the entire balance.¹¹ The account has been resolved.
- (SOR ¶ 1.g.): This is an electronics store account that was past due in the amount of \$39 that was placed for collection.¹² Applicant contacted the creditor and, on July 6, 2012, paid the entire unpaid balance.¹³ The account has been resolved.
- (SOR ¶ 1.i.): This is an automobile loan from a credit union with a high credit of \$19,263.¹⁴ According to a January 2011 credit report, where the account is reflected two times, and a July 2011 credit report, the account was either merely past due \$961 with an unpaid balance of \$5,100, or 150 days past due with an unpaid balance of \$355.¹⁵ According to a January 2012 credit report, the account was listed two separate times, with one entry reflecting a high credit of \$19,264 and a past-due balance of \$355,¹⁶ and the other entry reflecting a high credit of \$19,263 and a past-due balance of \$5,100.¹⁷ All three credit reports, as well as the five separate entries therein, were erroneous. Applicant had actually paid off the entire account in June 2007¹⁸ – four and one-half years before the SOR was issued. The account has been resolved.

⁹ Item 7, *supra* note 7, at 7.

¹⁰ Letter from the collection agent, *supra* note 8; Item 6 (Letter from creditor, dated June 15, 2011).

¹¹ E-mail from the creditor, dated July 20, 2012, attached to Applicant's Response to the FORM, dated July 23, 2012.

¹² Item 7, *supra* note 7, at 16.

¹³ Letter from the creditor, dated July 6, 2012, attached to Applicant's Response to the FORM, dated July 23, 2012.

¹⁴ Item 7, *supra* note 7, at 10.

¹⁵ Item 7, *supra* note 7, at 10; Item 8 (Equifax credit report, dated July 20, 2011), at 2.

¹⁶ Item 9 (Equifax credit report, dated January 20, 2012), at 3.

¹⁷ Item 9, *supra* note 16, at 3.

¹⁸ Letter from creditor, dated June 29, 2012, attached to Applicant's Response to the FORM, dated July 23, 2012.

- (SOR ¶ 1.j.): According to a January 2011 credit report, this is bank credit card account with a high credit of \$755 that was placed for collection, charged off, and transferred or sold to another collection agent.¹⁹ Extensive efforts by Applicant were made to locate the original creditor or the collection agent, and he finally tracked the account to a particular collection agent who indicated it had no record of the debt.²⁰ The debt was apparently sold again, this time to the collection agent that collected the dental account with a past-due balance of \$755 that was placed for collection and reflected in SOR ¶ 1.h. Despite having paid the account in June 2011, the account still appears in a January 2012 credit report as having a past-due amount of \$25 with an unpaid balance of \$297.²¹ The account has been resolved.

In July 2011, Applicant submitted a personal financial statement that reflected his monthly net income as \$6,040,²² plus unspecified union benefits. After deducting his monthly expenses, including debt payments, he estimated he had a monthly net remainder of \$1,039 available for discretionary spending or saving. He also submitted a weekly wage voucher reflecting a 60-hour work week at the rate of \$43 per hour, reflecting a net weekly income of \$2,130. There is no evidence that Applicant ever received financial counseling.

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.”²³ 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.”²⁴

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.

¹⁹ Item 7, *supra* note 7, at 13.

²⁰ Applicant’s Response to the FORM, dated July 23, 2012, at 1.

²¹ Item 9, *supra* note 16, at 1.

²² Item 6 (Personal Financial Statement, undated). See also, Item 6, *supra* note 2, at 2.

²³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."²⁵ 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.²⁶

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."²⁷

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."²⁸ 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

²⁵ "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).

²⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁷ *Egan*, 484 U.S. at 531

²⁸ See Exec. Or. 10865 § 7.

reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "*inability or unwillingness to satisfy debts*" is potentially disqualifying. Similarly, under AG ¶ 19(c), "*a history of not meeting financial obligations*" may raise security concerns. Applicant's financial problems commenced in about 2006 when some accounts became delinquent and were placed for collection, charged off, or, in one instance, went to a pre-foreclosure status. 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.*" Similarly, AG ¶ 20(d) applies where the evidence shows "*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.*"²⁹

²⁹ 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 she 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].

AG ¶¶ 20(a) and 20(b) apply. Applicant's financial problems commenced in 2006 when he first discovered his accounts were delinquent. As noted above, because of his position as a ship's master and his lengthy absences aboard ship six to seven months each year, Applicant's wife had control of the family finances. He generally assumed the family finances were being handled in a proper and timely manner. His assumptions were not well-founded. Applicant discovered his wife had: opened accounts and credit cards in his name; run up accounts without paying them; failed to make monthly mortgage payments for over 15 months; failed to file or pay state income tax for a multiple year period; and lied to him about her mishandling of the family finances. It is clear that the conditions that resulted in the financial problem were without his knowledge and were largely beyond his control. Once he determined the extent of his financial problems, he took responsibility for the family finances away from his wife, enlisted his mother-in-law's assistance in handling them when he is away, hired an attorney to assist him in the foreclosure action, and hired an accountant to represent him with the state income tax issues. Applicant's financial problems occurred under such circumstances that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. Furthermore, he acted responsibly under the circumstances.³⁰

AG ¶¶ 20(c) and 20(d) apply. While there is no evidence that Applicant has ever received counseling for his financial problems, there are clear indications that those financial problems are being resolved or are under control. Furthermore, once Applicant identified the creditors, he contacted each of them and in all but one instance, either obtained documentary confirmation that the account had been previously resolved, or he paid any remaining balance. That one exception is the one regarding the state income tax where he now has two offers-in-compromise and is making monthly payments as agreed.³¹

There is a substantial risk when one accepts, at face value, the contents of a credit report without obtaining original source documentation to verify entries. Credit bureaus collect information from a variety of sources, including public records and "other sources," and it is these other unidentified sources that are the cause for concern. Likewise, when accounts are transferred, reassigned, sold, or merely churned, an individual's credit history can look worse than it really is. In this particular instance, the 2011 and 2012 credit reports referred to one particular account as being delinquent when that account had actually been paid off in 2007. Also, because of abbreviated

(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)).

³⁰ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

³¹ "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.

names and acronyms, and the absence of full or, in some instances, even partial account numbers, many of those entries are garbled and redundant, and have inflated the financial concerns.

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.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³²

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.

³² ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

There is some evidence against mitigating Applicant's conduct. His lack of oversight regarding his wife's handling of the family finances permitted accounts to become delinquent. As a result, accounts were either placed for collection, charged off, sold, or went to pre-foreclosure.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems commenced in 2006, when he first discovered their existence. As noted above, the financial problems – all of which were caused by his wife – were beyond his control and were without his knowledge. Upon discovering the situation, Applicant took control of the family finances away from his wife, contacted his creditors, and engaged the professional services of an attorney and an accountant. He has resolved all but one of his delinquent accounts and is in the process of resolving the remaining account.

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.³³ Applicant has demonstrated a meaningful track record of debt reduction and elimination. Overall, the evidence leaves me without questions and 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. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	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

³³ 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).

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