



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-07600

Appearances

For Government: Pamela Benson, Esquire, Department Counsel

For Applicant: *Pro se*

04/10/2013

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 January 19, 2011, 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 April 23, 2012, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on May 21, 2012.² The DOD issued a Statement of Reasons (SOR) to him on July 11, 2012, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD 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*

¹ Item 5 (SF 86, dated January 19, 2011).

² Item 6 (Applicant's Answers to Interrogatories, dated May 21, 2012).

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 the DOD adjudicators were 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 received the SOR on July 26, 2012. In a sworn, undated, declaration,³ 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 January 28, 2013, 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 February 1, 2013, but, as of March 26, 2013, he had not submitted a response to the FORM. The case was assigned to me on March 30, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations (¶¶ 1.a. through 1.f.) of the SOR. 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 43-year-old employee of a defense contractor who, since October 2010, has been serving as a senior engineering technician. He had previously been employed by various other employers as a continuous improvement team leader, senior engineering technician, marine electronics technician, avionics technician, A & P mechanic, engine technician, and radio and electronics mechanic.⁴ Applicant was laid off and unemployed from October 2001 until September 2002.⁵ He has never served in the U.S. military.⁶ It is unclear if he was ever granted a security clearance, but in 2000 and 2003 he apparently was issued the following airport badges: Secure Identification Display Area (SIDA), and Airfield Operations Area (AOA), after undergoing a fingerprint-based criminal history records check.⁷ His application for an interim security clearance was denied in February 2011.⁸

³ Item 4 (Applicant's Answer to the SOR, undated).

⁴ Item 5, *supra* note 1, at 17-25.

⁵ Item 5, *supra* note 1, at 24.

⁶ Item 5, *supra* note 1, at 26; Item 6 (Personal Subject Interview, dated February 28, 2011), at 6.

⁷ Item 5, *supra* note 1, at 43-44.

⁸ Item 9 (Joint Personnel Adjudication System (JPAS) Person Summary, dated January 18, 2013).

Applicant received an associate's degree in an unspecified discipline in September 1995. He married his first wife in 1992, and was divorced in 2006.⁹ They have two children, a daughter and a son, born in 1993 and 1997, respectively. Applicant married his current wife in 2007.

Financial Considerations

There was nothing unusual about Applicant's finances until 2009, when his wife, who had been earning an annual salary of between \$55,000 and \$65,000, lost her job.¹⁰ She also lost a second job, but the timeframe was not described.¹¹ Because he had insufficient funds, due to her job loss and his reduced overtime hours, to maintain all of his accounts in a current status, several of them became delinquent.¹² Eventually, a variety of accounts were placed for collection or charged off. Child support fell into arrears. A vehicle was repossessed. Applicant satisfied a tax lien in 2009,¹³ and resolved the child support issue in 2011.¹⁴

Applicant has not received any financial counseling or debt consolidation counseling.¹⁵ It does not appear that he has contacted any other creditors or collection agents in an effort to resolve his delinquent accounts. He indicated an intention to do so immediately following his interview with an investigator from the U.S. Office of Personnel Management (OPM), or when he has an improved income.¹⁶

In May 2012, Applicant submitted a personal financial statement reflecting a net monthly income of \$4,413.64, including his salary, his spouse's salary, and other income.¹⁷ He claimed \$4,007 in monthly expenses, as well as \$250 in debt payments.¹⁸ Using his numbers, he has \$156.64 left over each month for discretionary spending or savings.

⁹ Item 5, *supra* note 1, at 30.

¹⁰ Item 6 (Personal Subject Interview), *supra* note 6, at 2.

¹¹ Item 6 (Personal Subject Interview), *supra* note 6, at 2.

¹² Item 6 (Applicant's Answers to Interrogatories), *supra* note 2, at 7; Item 4, *supra* note 3, at 2.

¹³ Item 6 (Personal Subject Interview), *supra* note 6, at 1, 5.

¹⁴ Item 6 (Agreed Supplemental Final Judgment, dated October 26, 2011), attached to Applicant's Answers to Interrogatories; Item 6 (Personal Subject Interview), *supra* note 6, at 2, 5-6.

¹⁵ Item 6 (Personal Subject Interview), *supra* note 6, at 2.

¹⁶ Item 6 (Personal Subject Interview), *supra* note 6, at 2.

¹⁷ Item 6 (Personal Financial Statement, dated May 19, 2012), attached to Applicant's Answers to Interrogatories.

¹⁸ Item 6 (Personal Financial Statement), *supra* note 17.

The SOR identified six purportedly continuing delinquencies, totaling approximately \$14,449. There is a truck loan with a past due balance of \$13,058 that was placed for collection and charged off (SOR ¶ 1.a.).¹⁹ The vehicle was repossessed in September 2010.²⁰ It was sold at public auction with the deficiency balance listed as the high credit of \$12,167 when it was transferred or sold to the current collection agent, and the past due balance was increased to \$13,513.²¹ In his Answer to the SOR, Applicant acknowledged that he had not made any effort to resolve the account, but indicated he intended to make payments at the beginning of 2013.²² He has not submitted any documentation to support his contention that such payments would commence or had already commenced. The account remains unresolved.

There is an account with an employment website that Applicant used for about one year with a past due balance of \$80 that was placed for collection (SOR ¶ 1.b.).²³ The account was generally paid by an automatic withdrawal from Applicant's bank account, but on one occasion in September 2010, there were insufficient funds to cover his payment.²⁴ The balance was increased by accrued fees and interest. During his OPM interview in February 2011, Applicant indicated he would contact the collection agent to set up a repayment plan after the interview.²⁵ In his Answer to the SOR, Applicant acknowledged that he had not made any effort to resolve the account. The account remains unresolved.

There is a medical account with an unidentified medical provider with a past due balance of \$220 that was placed for collection in 2009 (SOR ¶ 1.c.).²⁶ During his OPM interview, Applicant indicated he would set up a repayment plan as soon as possible.²⁷ In his Answer to the SOR, Applicant acknowledged that he had not made any effort to resolve the account. The account remains unresolved.

There is a credit card account with a high credit of \$500, and an unpaid balance of \$748 that was \$193 past due, placed for collection, and charged off (SOR ¶ 1.d.).²⁸ The account was sold to a factoring company, and the unpaid balance was increased to

¹⁹ Item 6 (TransUnion Credit Report, dated May 9, 2012), at 2, attached to Applicant's Answers to Interrogatories.

²⁰ Item 6 (Personal Subject Interview, *supra* note 6, at 1.

²¹ Item 7 (Combined Experian, TransUnion, Equifax Credit Report, dated February 16, 2011), at 5; Item 8 (Equifax Credit Report, dated January 18, 2013), at 2.

²² Item 4, *supra* note 3, at 2.

²³ Item 7, *supra* note 21, at 7; Item 6 (Personal Subject Interview, *supra* note 6, at 5.

²⁴ Item 6 (Personal Subject Interview, *supra* note 6, at 5.

²⁵ Item 6 (Personal Subject Interview, *supra* note 6, at 5.

²⁶ Item 7, *supra* note 21, at 8.

²⁷ Item 6 (Personal Subject Interview, *supra* note 6, at 6.

²⁸ Item 7, *supra* note 21, at 7

\$780.²⁹ During his OPM interview, Applicant indicated he would set up a repayment plan as soon as possible.³⁰ In his Answer to the SOR, Applicant acknowledged that he had not made any effort to resolve the account. The account remains unresolved.

There is an account with a former employer with an unpaid balance of \$270 that was placed for collection (SOR ¶ 1.e.).³¹ During his OPM interview, Applicant indicated he disputed the account and would immediately address the account with the creditor.³² In his Answer to the SOR, Applicant acknowledged that he had not made any effort to resolve the account. The account remains unresolved.

There is a bank account with a past due balance of \$41 that was placed for collection (SOR ¶ 1.f.).³³ Applicant contended the account was the result of his bank refusing to close his account when he relocated to another state, leaving a positive balance of \$3 in the account. The bank refused to close the account over the telephone and demanded Applicant close the account in person. The bank notified him several years later that it had closed the account but had charged him \$41 to do so.³⁴ During his OPM interview, Applicant indicated he disputed the account and explained what had happened. He had furnished his story to an attorney representing the creditor in 2008, and has heard nothing from the creditor or any collection agent since that time.³⁵ The account is listed in the February 2011 credit report, but is not listed in the May 2012 or January 2013 credit reports. I conclude that this account has been resolved.

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.”³⁶ 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

²⁹ Item 6 (TransUnion Credit Report), *supra* note 19, at 2. It should be noted that “factoring company” is a company that buys “accounts receivable” from a current creditor and then collects on those receivables from the debtor. A factored account is not supposed to be an account that is past due or charged off.

³⁰ Item 6 (Personal Subject Interview, *supra* note 6, at 2.

³¹ Item 7, *supra* note 21, at 8.

³² Item 6 (Personal Subject Interview, *supra* note 6, at 6.

³³ Item 7, *supra* note 21, at 8.

³⁴ Item 6 (Personal Subject Interview, *supra* note 6, at 6.

³⁵ Item 6 (Personal Subject Interview, *supra* note 6, at 6.

³⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”³⁷

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.”³⁸ 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.³⁹

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.”⁴⁰

³⁷ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁸ “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).

³⁹ *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁰ *Egan*, 484 U.S. at 531

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”⁴¹ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly, under AG ¶ 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Commencing in 2009, Applicant had insufficient funds to make all of his monthly account payments. As a result, some accounts started to become delinquent, and were placed for collection or charged off. A vehicle was repossessed, child support fell into arrears, and a tax lien was in place. His delinquent debts remain largely 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

⁴¹ See Exec. Or. 10865 § 7.

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.*”⁴² In addition, AG ¶ 20(e) may apply if *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.*

AG ¶ 20(a) does not apply. The nature, frequency, and relative recency of Applicant’s continuing financial difficulties since 2009 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” In light of his substantial period of continuing financial problems, the repeated promises to resolve his delinquent debts, and the inaction that followed those promises, it is unlikely that they will be resolved in the short term, and they are likely to continue. Under the circumstances, Applicant’s actions do cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) partially applies. Applicant generally attributed his financial problems to the loss of his wife’s income and his reduced overtime hours. The record is silent as to when his reduced overtime hours started, or if that reduction was ever terminated. Also, Applicant did not specify the monthly amount his salary suffered because of the reduced overtime. He failed to indicate exactly when his wife regained employment and started contributing to the payment of the family debts. Under these circumstances it is unclear if Applicant acted responsibly.⁴³

AG ¶ 20(c) does not apply because Applicant has never received counseling in money management, debt management, debt repayment, or budgeting. Furthermore, considering Applicant’s general inaction following several promises, over several years,

⁴² 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].

(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)).

⁴³ “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.

to resolve his accounts, the indications are that the financial problems have not been resolved and are not under control.

AG ¶ 20(d) does not apply. Other than the relatively isolated satisfaction of a tax lien in 2009 and the resolution of the child support arrearage in 2011, there is little evidence to indicate that Applicant initiated a more recent good-faith effort to repay his overdue creditors or otherwise resolve his debts. There is an \$80 debt that has been delinquent since September 2010, and even with a monthly remainder of \$156.64 left over for discretionary spending or savings, Applicant has ignored that debt. Applicant's statements regarding his future intent to resolve his debts, without corroborating documentary evidence supporting actual action to do so, are entitled to little weight. His declarations of future intention to resolve his debts, after so much time where no positive efforts were taken, do not qualify as a "good-faith" effort.

AG ¶ 20(e) partially applies. Applicant disputed the \$41 debt with his bank, and while he offered no documentary evidence to confirm his contentions, there is documented proof to indicate that the account is no longer listed in his two recent credit reports.

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.⁴⁴

There is some evidence in favor of mitigating Applicant's conduct. He resolved the tax lien in 2009 and the child support arrearage in 2011, well before the SOR was

⁴⁴ 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).

issued. He has acknowledged responsibility for his delinquent debts and promised to resolve them.

The disqualifying evidence under the whole-person concept is more substantial. Except for those tax lien and the child support accounts, Applicant did not contact any of his creditors and collection agents in an effort to resolve those accounts, despite repeated promises to do so. Applicant's continuing inaction under the circumstances confronting him does cast doubt on his current reliability, trustworthiness, or good judgment. His reputation in the workplace is unknown.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁴⁵

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.

Applicant has demonstrated the absence of a "meaningful track record" of debt reduction and elimination. There are delinquent debts, repeated promises of action to resolve those debts, and inaction by Applicant to do so. Overall, the evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate 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:

⁴⁵ 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:	For Applicant

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