



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-11940

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

08/01/2013

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 October 5, 2007, 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 September 19, 2012, the Department of Defense (DOD) issued him a set of interrogatories. He responded to the interrogatories on November 2, 2012.² On January 23, 2013, the DOD 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 4 (SF 86), dated October 5, 2007.

² Item 5 (Applicant's Answers to Interrogatories, dated November 2, 2012).

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 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.

It is unclear when Applicant received the SOR. In a sworn statement, notarized February 25, 2013,³ 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 June 3, 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 June 11, 2013. He submitted a timely response to the FORM, to which there was no objection. The case was assigned to me on July 23, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted nearly all (¶¶ 1.a. through 1.j., and 1.l. through 1.n.) of the factual allegations pertaining to financial considerations of the SOR.⁴ 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 58-year-old employee of a defense contractor who, since July 2007, has been serving as a technical call technician.⁵ He previously worked for other employers as a call center agent, customer support agent, contract worker, inventory specialist, computer help desk agent, and county security officer.⁶ He was unemployed from October 2006 until March 2007; March 2003 until October 2006; and June 2002 until December 2002.⁷ He received a Bachelor of Science degree in electronics engineering technology in October 2006.⁸ He served on active duty with the U.S. Air

³ Item 2 (Applicant's Answer to the SOR, dated February 25, 2013).

⁴ Although Applicant admitted the allegation in ¶ 1.f., he stated that the account was paid in October 2010. He also admitted the allegation in ¶ 1.b., but stated he was making payments on the account. He stated that the allegations in ¶¶ 1.d. and 1.e. referred to the same account, and the allegations in ¶¶ 1.g. and 1.n. referred to one account. With the exception of his statements regarding the allegations in ¶¶ 1.b. and 1.f., he failed to offer any documentation to support his contentions.

⁵ Item 4, *supra* note 1, at 12.

⁶ Item 4, *supra* note 1, at 12-20.

⁷ Item 4, *supra* note 1, at 15-17. Applicant acknowledged he received unemployment compensation during his periods of unemployment.

⁸ Item 4, *supra* note 1, at 11.

Force in an enlisted capacity from 1973 until 1983, and received an honorable discharge.⁹ He has held a top secret security clearance for an unspecified period of time.¹⁰ Applicant was married in December 1993.¹¹ He was previously married to another woman on an unspecified date, and divorced in October 1993.¹² He has two sons (born in 1980 and 1981), two daughters (born in 1978 and 1983), a stepson (born in 1976) and a stepdaughter (born in 1978).¹³

Financial Considerations

There apparently was nothing unusual about Applicant's finances until about December 2001, when he claimed he became unemployed.¹⁴ Accounts became delinquent. Applicant has been gainfully employed since March 2007. While he was able to address some of his delinquent accounts since that time, there were some remaining accounts that still awaited his attention. The financial situation deteriorated once again in 2009, when his daughter separated from her boyfriend and needed a place to live. She and her three children moved in with Applicant and they became his dependents.¹⁵ The daughter was to contribute \$500 per month for rent and contribute 50 percent of the bills and food, but at some point, she stopped making the payments, and the children's needs became more of his responsibility. The additional financial responsibilities diverted money from his budget, and he periodically failed to pay his monthly mortgage and other bills.¹⁶ Although the situation was to be a temporary one, it took longer than anticipated for his daughter to find a job, and they remained in his household at least until late 2011.¹⁷ During the same period, Applicant's employer reduced the available overtime, and Applicant's income was also decreased.¹⁸ Once again, accounts became delinquent and were placed for collection or were charged off. One account went to judgment.

⁹ Item 4, *supra* note 1, at 35-36.

¹⁰ Item 4, *supra* note 1, at 40.

¹¹ Item 4, *supra* note 1, at 22.

¹² Item 5 (Personal Subject Interview, dated May 26, 2011), at 1, attached to Applicant's Answers to the Interrogatories.

¹³ Item 4, *supra* note 1, at 26-30.

¹⁴ Item 5 (Personal Subject Interview), *supra* note 12, at 2. This date differs from the information Applicant furnished on his SF 86, where he claimed his initial period of unemployment took place from June 2002 until December 2002.

¹⁵ Item 5 (Personal Subject Interview), *supra* note 12, at 2.

¹⁶ Item 5, *supra* note 2, at I-6.

¹⁷ Item 5 (Personal Subject Interview), *supra* note 12, at 2; Item 5, *supra* note 2, at I-21.

¹⁸ Item 5, *supra* note 2, at I-6.

Although Applicant contended he was making an effort to re-arrange monthly payments to pay “the most important first,” and then his other debts,¹⁹ he submitted no specific plan or documentation to support his contentions. He hoped to eliminate his debts to become debt-free.²⁰ Applicant never contacted any debt consolidation service and never received any financial counseling.²¹

In June 2011, Applicant submitted a personal financial statement reflecting a family net monthly income of \$3,118.58. He claimed \$3,772.86 in monthly expenses, with \$496.41 in debt payments, leaving minus \$1,151.14. Potential overtime earnings and infrequent payments from his daughter were not included in the net monthly income calculations. If they were so included, Applicant would still have insufficient funds for discretionary spending or savings.²² In November 2012, Applicant submitted another personal financial statement reflecting a family net monthly income of \$4,003.70. He claimed \$2,447.84 in monthly expenses, with \$977.00 in debt payments, leaving \$578.86 available for discretionary spending or savings.²³

The SOR identified 15 purportedly continuing delinquencies. For the purposes of discussion, the accounts can be separated into: a) those which Applicant contended he either has paid off or is in the process of paying; and b) those which Applicant has made little if any effort to contact the creditor or dispute the account, and has offered no substantiated proof of any payment arrangements or payments.

In the first category, or those which Applicant contended he either has paid off or is in the process of paying, are the following: an account for the financing of an automobile with a high credit of \$10,872 that was \$3,191 past due and placed for collection and charged off (SOR ¶ 1.b.).²⁴ Although the SOR alleged the past-due amount was \$11,193, an amount reflected in the September 2012 credit report,²⁵ that amount is erroneous, as is the listing in the January 2013 credit report, wherein it is reflected as \$11,053.²⁶ Applicant has been making monthly \$35 payments for an unspecified period, and as of February 2013, the unpaid balance has been decreased to \$9,874.67.²⁷ The account is in the process of being resolved.

¹⁹ Item 5 (Personal Subject Interview), *supra* note 12, at 3.

²⁰ Item 5 (Personal Subject Interview), *supra* note 12, at 3.

²¹ Item 5 (Personal Subject Interview), *supra* note 12, at 3; Item 5, *supra* note 2, at I-10.

²² Item 5 U.S. Office of Personnel Management (OPM) Report of Investigation (ROI), dated August 10, 2011), at 3-5, attached to Applicant’s Answers to the Interrogatories.

²³ Item 5 (Personal Financial Statement, undated), attached to Applicant’s Answers to the Interrogatories.

²⁴ Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 5, 2011), at 9.

²⁵ Item 8 (Equifax Credit Report, dated September 14, 2012), at 2.

²⁶ Item 9 (Equifax Credit Report, dated January 9, 2013), at 1.

²⁷ Letter from collection agent, dated February 7, 2013, attached to Applicant’s Answer to the SOR.

There is a water utility account with an unpaid balance of \$219 that was placed for collection (SOR ¶ 1.f.).²⁸ Although the SOR alleged the account was still unpaid in January 2013, as reflected in the May 2011 credit report,²⁹ the information and the allegation were erroneous, as the account, in the amount of \$218.90, was paid in October 2010.³⁰ The account has been resolved.

In the second category, or those which Applicant has made little if any effort to contact the creditor or dispute the account, and has offered no substantiated proof of any payment arrangements or payments, are the following: a medical account in the amount of \$2,242 (SOR ¶ 1.a.);³¹ a medical account in the amount of \$125 (SOR ¶ 1.c.);³² a student loan in the amount of \$18,279 (SOR ¶ 1.d.);³³ a student loan in the amount of \$17,622 (SOR ¶ 1.e.);³⁴ an insurance account in the amount of \$89, alleged two times in the SOR (SOR ¶¶ 1.g. and 1.n.);³⁵ a medical account in the amount of \$514 (SOR ¶ 1.h.);³⁶ a medical account in the amount of \$38 (SOR ¶ 1.i.);³⁷ an unspecified type of account in the amount of \$1,495 (SOR ¶ 1.j.);³⁸ an account with a fuel company in the amount of \$49 (SOR ¶ 1.k.);³⁹ an unspecified type of account in the amount of \$113 (SOR ¶ 1.l.);⁴⁰ an account with a pizza shop in the amount of \$48 (SOR ¶ 1.m.);⁴¹ and a telephone account in the amount of \$285 (SOR ¶ 1.o.).⁴² Seven of the above accounts have been in a delinquent status since before 2007, and none of the above accounts has been resolved.

With respect to his non-SOR accounts, in June 2012, Applicant entered into a loan modification agreement with his mortgage lender to extend or rearrange the time and manner of payment of the note and to extend and carry forward the lien on the

²⁸ Item 7, *supra* note 24, at 14.

²⁹ Item 7, *supra* note 24, at 14.

³⁰ Letter from creditor, dated November 2, 2012, attached to Applicant's Answer to the SOR.

³¹ Item 9, *supra* note 26, at 1.

³² Item 8, *supra* note 25, at 1.

³³ Item 7, *supra* note 24, at 6.

³⁴ Item 7, *supra* note 24, at 7.

³⁵ Item 6 (Equifax Credit Report, dated October 20, 2007), at 20; Item 7, *supra* note 24, at 15.

³⁶ Item 6, *supra* note 35, at 8-9; Item 7, *supra* note 24, at 15.

³⁷ Item 6, *supra* note 35, at 9; Item 7, *supra* note 24, at 15.

³⁸ Item 7, *supra* note 24, at 15.

³⁹ Item 6, *supra* note 35, at 8.

⁴⁰ Item 6, *supra* note 35, at 9.

⁴¹ Item 6, *supra* note 35, at 18.

⁴² Item 6, *supra* note 35, at 20.

property,⁴³ but the specifics of the modification were not described. He also paid \$1,033.27 in student loan interest during calendar year 2012.⁴⁴

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.”⁴⁵ 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.”⁴⁶

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.”⁴⁷ 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

⁴³ Non-HAMP Loan Modification Agreement, dated June 1, 2012, submitted by Applicant in response to the FORM.

⁴⁴ Form 1098-E, Student Loan Interest Statement, undated, submitted by Applicant in response to the FORM.

⁴⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴⁷ “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).

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.⁴⁸

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."⁴⁹

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."⁵⁰ 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. . . .

⁴⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁹ *Egan*, 484 U.S. at 531

⁵⁰ 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. Applicant has had financial problems since December 2001, and those problems were exacerbated in 2009. A substantial number of his accounts became delinquent, and they were placed for collection or were charged off. Although he has been gainfully employed since July 2007, the vast majority of his delinquent accounts 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*.⁵¹

AG ¶¶ 20(a), 20(c), and 20(d), do not apply, and AG ¶ 20(b) partially applies. The nature, frequency, and relative recency of Applicant's continuing financial difficulties since 2001 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." In light of his continuing inability or failure to resolve his pre-2007 delinquent accounts, as well as his more recent delinquent accounts; the absence of significant efforts to contact his creditors; the lack of a clear repayment plan; the absence of repayment arrangements with his creditors; the paucity of payments to creditors, even those with balances under \$500; and his failure to obtain financial counseling, Applicant's financial problems are unlikely to be resolved in the short term, and they are likely to continue. Applicant's actions with respect to his delinquent accounts do not constitute a "good-faith" effort on his part. Applicant contended his financial problems

⁵¹ 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)).

were caused by his loss of employment, the loss of overtime, or the presence of his daughter and grandchildren living in his residence for a lengthy period. Applicant's period of unemployment was clearly beyond his control, but it ended in March 2007, and Applicant has been gainfully employed since then. While the loss of overtime might be considered beyond his control, it is not an entitlement to be expected, but rather a possibility that might occur. While Applicant accepted financial responsibility for his daughter and grandchildren, he never explained whether or not they were receiving child support or public assistance. Furthermore, Applicant never explained what additional expenses he incurred because of their presence in his residence. Applicant's daughter and children departed in mid-2011, but he never explained why he was unable to address his debts after their departure. After so much time where little positive efforts were taken, I conclude that Applicant failed to mitigate his financial situation. Under the circumstances, his actions cast doubt on his current reliability, trustworthiness, and good judgment.⁵²

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.⁵³

There is some evidence in favor of mitigating Applicant's conduct: He has been gainfully employed since March 2007; he is a veteran; and he is a caring father and grandfather.

⁵² See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁵³ 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).

The disqualifying evidence under the whole-person concept is more substantial. Applicant's actions reflect a continuing inability or failure to resolve his pre-2007 delinquent accounts, as well as his more recent delinquent accounts. There is an absence of "good-faith" efforts to contact most of his creditors, set up repayment plans, or to make payments to creditors, even for those with balances under \$500. Applicant has not demonstrated a meaningful track record in addressing his delinquent accounts. Applicant's actions indicate a lack of judgment, which raises 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant (duplicates 1.g.)
Subparagraph 1.o:	Against 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