



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



In the matter of:)
)
-----) ISCR Case No. 12-02450
)
Applicant for Security Clearance)

Appearances

For Government: Christopher Morin, Esquire, Department Counsel
For Applicant: *Pro se*

01/06/2014

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations and personal conduct. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On November 16, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On May 8, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility issued him a set of interrogatories. He responded to the interrogatories on June 28, 2013.² On July 31, 2013, the DOD issued a Statement of Reasons (SOR) to him, 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*

¹ GE 1 ((SF 86), dated November 16, 2011).

² GE 2 (Applicant's Answers to Interrogatories, dated June 28, 2013).

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 Guideline E (Personal Conduct), 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 August 13, 2013. In a sworn statement, dated October 28, 2013, Applicant responded to the SOR allegations and requested a hearing. Department Counsel indicated the Government was prepared to proceed on November 13, 2013. The case was assigned to me on November 14, 2013. A Notice of Hearing was issued on December 3, 2013, amended on December 6, 2013, and I convened the hearing, as scheduled, on December 17, 2013.³

During the hearing, 4 Government exhibits (GE 1 through GE 4) and 11 Applicant exhibits (AE A through AE K) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on January 2, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. He submitted six additional documents (AE L through AE Q), which were admitted into evidence without objection. The record closed on December 23, 2013.

Findings of Fact

In his Answer to the SOR, Applicant admitted six of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.d., 1.f., and 1.h.). He denied the remaining allegations. 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 33-year-old employee of a defense contractor who, since November 2008, has served as a field systems engineer.⁴ He was previously a command and control systems instructor with another employer. Applicant was on active duty with the U.S. Marine Corps from March 2000 until March 2008, when he was honorably discharged as a sergeant (E5).⁵ As a result of various service-related injuries, he was awarded a disability rating of 50 percent.⁶ He first was granted a secret security clearance on an unspecified date, then a top secret security clearance with access to

³ The Directive established that notification as to the time and place of a hearing be furnished to an applicant at least 15 days in advance of the time of the hearing. See, Directive, Encl. 3, § E3.1.8. In this instance, Department Counsel and Applicant were in discussions regarding the potential time and location long before the actual Notice of Hearing was issued. Applicant did not object to proceeding with the hearing as scheduled.

⁴ GE 1, *supra* note 1, at 13.

⁵ AE A (Certificate of Release or Discharge from Active Duty (DD Form 214), dated March 28, 2008).

⁶ Tr. at 6, 32-33.

sensitive compartmented information (SCI) in December 2002, but his clearances were subsequently administratively downgraded.⁷ Applicant attended college briefly in 2009-2010, but did not obtain a degree.⁸ He was married in July 2006.⁹ Applicant has one daughter from a prior relationship, born in February 2005, and he and his wife have a son, born in January 2007.¹⁰

Military and Civilian Service

As a member of the U.S. military, Applicant was deployed to Djibouti from April 2003 to December 2003; and to Iraq from January 2005 until September 2005. As a civilian contractor, he was deployed to Afghanistan from April 2009 until September 2009.¹¹ During his military service, Applicant was awarded the Marine Corps Good Conduct Medal (two awards), the Navy and Marine Corps Achievement Medal, the Joint Service Achievement Medal, the Iraq Campaign Medal, the Sea Service Deployment Ribbon (four awards), the Global War on Terrorism Service Medal, the Global War on Terrorism Expeditionary Medal, the National Defense Service Medal, the Navy Commendation Medal, the Joint Meritorious Service Unit Award, the Rifle Qualification Badge (Expert), the Pistol Qualification Badge (Sharpshooter), Certificates of Commendation (four awards), and Letters of Appreciation (two awards).¹²

Financial Considerations

There was nothing unusual about Applicant's finances until after September 2005 when he returned from his deployment to Iraq. He received physical custody of his daughter, who soon developed a medical issue, and his wife had to quit her job. In addition, Applicant had been misdiagnosed and improperly treated for depression rather than his actual condition, which turned out to be attention deficit hyperactivity disorder (ADHD). Untreated ADHD keeps Applicant from being able to focus, causes him to be overactive, and unable to control his behavior. He became careless with money and made poor decisions. There were a number of accounts about which Applicant had no knowledge, and when they became past due or were placed for collection, he did not receive any collection notices. Nevertheless, accounts did become past due and placed for collection.

In response to the DOD interrogatories, in June 2013, Applicant provided a personal financial statement reflecting a family monthly net salary of \$6,164.16, monthly household, utility, transportation, and food expenses of \$4,456, and monthly debt

⁷ GE 1, *supra* note 1, at 35; GE 2 (Personal Subject Interview, dated January 6, 2012), at 2; Tr. at 6-7.

⁸ GE 1, *supra* note 1, at 12.

⁹ GE 1, *supra* note 1, at 21-22.

¹⁰ GE 1, *supra* note 1, at 23-24.

¹¹ Tr. at 29-31.

¹² AE A, *supra* note 4.

repayments of \$200, leaving a monthly remainder of \$1,508.16 available for discretionary savings or expenditures.¹³ He also listed \$21,000 in a 401(k) retirement account.¹⁴ In December 2013, Applicant submitted an updated personal financial statement reflecting a family monthly net salary of \$5,315.38, monthly household, utility, transportation, and food expenses of \$4,006, and monthly debt repayments of \$150, leaving a monthly remainder of \$1,159.38.¹⁵

The SOR identified eight delinquent debts totaling \$17,770 that had been placed for collection or charged off, as generally reflected by a 2011 credit report¹⁶ or a 2013 credit report.¹⁷ Some accounts listed in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit report, in some instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Several accounts are listed with only partial account numbers. Those debts listed in the SOR, and their respective current status, according to the credit reports, evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶ 1.a.) This refers to a medical account with an unidentified medical provider with a high credit of \$100 and an unpaid balance of \$115 that was placed for collection in July 2011.¹⁸ Applicant was unaware of anything pertaining to the debt and attempted to obtain validation of the debt from the collection agent, but it refused, claiming it was not responsible for furnishing written validation of the debt.¹⁹ He eventually learned the medical services were provided for his son, and Applicant settled the account and paid the collection agent \$100.²⁰ The account has been resolved.

(SOR ¶ 1.b.) This refers to an account with a university with a high credit and past-due balance of \$735 that was placed for collection and charged off in 2008.²¹ Applicant was unaware of a past-due balance until the investigator from the U.S. Office of Personnel Management (OPM) interviewed him. Applicant initially thought the balance was consolidated with his remaining student loans, and since he is current on his payments for the consolidated loans, he thought the matter was settled. It was not,

¹³ GE 2 (Personal Financial Statement, dated June 28, 2013).

¹⁴ GE 2 (Personal Financial Statement), *supra* note 13.

¹⁵ AE Q (Personal Financial Statement, dated December 23, 2013).

¹⁶ GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 7, 2011).

¹⁷ GE 4 (Equifax Credit Report, dated May 7, 2013).

¹⁸ GE 3, *supra* note 16, at 6.

¹⁹ GE 2 (Personal Subject Interview), *supra* note 7, at 3; GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 21.

²⁰ Applicant's Answer to the SOR, at 1; AE E (Account Activity Transaction Details, dated September 30, 2013); Tr. at 35-37.

²¹ GE 3, *supra* note 16, at 12; GE 4, *supra* note 17, at 2.

for the account was actually transferred or sold to two other collection agents. Applicant contacted the most recent collection agent and immediately paid it \$734.80.²² His balance for this particular loan is zero.²³ The account has been resolved.

(SOR ¶ 1.c.) This refers to what appears to be an automobile financing account with a high credit of \$23,659 and a post-repossession unpaid balance (after the vehicle was sold at auction) of \$10,614 that was placed for collection.²⁴ The account was eventually transferred or sold to two different collection agents. Applicant attempted to obtain a repayment agreement with the original creditor, but it would not accept anything less than the entire amount in one payment.²⁵ In October 2013, the most recent collection agent agreed to a full and final settlement in the amount of \$5,207.44.²⁶ Applicant made the initial payment of \$4,166 on October 15, 2013.²⁷ He made two additional payments, each for \$937.35,²⁸ and the creditor considered the account to have been paid in full.²⁹ The account has been resolved.

(SOR ¶ 1.d.) This refers to a student loan account, in an unspecified amount, opened with a bank that was apparently comingled with Applicant's other student loans. Those loans were classified as either Stafford subsidized or Stafford unsubsidized loans.³⁰ The loans were transferred to a student loan servicer. At that point, the loans were in a deferred status. After Applicant stopped attending school, he attempted to set up a forbearance on the loans, but somehow, before accomplishing his goal, the account became 180 days past due. The account, with a high credit of \$5,180, a past due balance of \$706, and an unpaid balance of \$5,180, was transferred back to "the government."³¹ The student loans have been placed in a grace period status, deferred status, in forbearance status, in repayment status, in defaulted and unresolved status, and in paid in full status.³² In September 2013, the balance of the student loan was

²² AE N (E-mail, dated December 23, 2013); AE P (Account Activity Transaction Details, dated December 19, 2013).

²³ AE F (Account Summary Outstanding Balances, dated December 17, 2013).

²⁴ GE 3, *supra* note 16, at 15.

²⁵ Tr. at 50.

²⁶ AE D (Letter, dated October 10, 2013).

²⁷ AE C (Account Activity Transaction Details, dated October 15, 2013); AE G (Account Activity Transaction Details, dated October 15, 2013), at 1.

²⁸ AE G, *supra* note 26, at 2-3.

²⁹ AE L (Letter, dated December 18, 2013).

³⁰ AE M (Financial Aid Review, dated December 18, 2013); AE O (MyStudentData, dated December 19, 2013). According to the U.S. Department of Education, Applicant received a loan disbursement of \$1,750, but other loan disbursements were actually cancelled. See, AE O, at 1.

³¹ GE 3, *supra* note 16, at 5-6.

³² AE O, *supra* note 30.

\$718.72, and the account was in a repayment status.³³ Applicant has been making monthly payments since January 2012, and as of November 23, 2013, the unpaid balance was \$707.54.³⁴ The account is in a repayment status, and is in the process of being resolved.

(SOR ¶ 1.e.) This refers to a music club account with a past due balance of \$29 that was placed for collection in 2011.³⁵ The account was eventually transferred or sold to another collection agent. Applicant had no knowledge of the account and denied ever opening an account with that particular creditor or ever purchasing merchandise from it.³⁶ He disputed the account with the credit reporting agencies, and the listing was removed from his credit reports.³⁷ The account was listed in Applicant's December 2011 Combined Credit Report, but is not listed in his May 2013 Equifax credit report,³⁸ and is not listed in his December 2013 TransUnion credit report.³⁹ The account has been resolved.

(SOR ¶ 1.f.) This refers to a medical account with an unidentified medical provider with a high credit, past due balance, and unpaid balance of \$200 that was placed for collection in 2010.⁴⁰ Applicant was unaware of anything pertaining to the debt and attempted to obtain validation of the debt from the collection agent, but it refused to furnish him any specifics as to patient identity or date of service.⁴¹ Applicant later learned that the balance was a combination of unpaid copays generated by his children's visits to the pediatrician.⁴² He paid the collection agent \$200 on September 18, 2013.⁴³ The account has been resolved.

(SOR ¶ 1.g.) This refers to a high interest credit card account with high credit of \$646 and an unpaid balance of \$647 that was placed for collection in 2008.⁴⁴ When interviewed by the OPM investigator in January 2012, Applicant indicated the account was used by his wife and he was unaware it was delinquent. He also indicated he

³³ AE B (Letter, dated September 26, 2013).

³⁴ AE H (Account Statement, dated November 23, 2013).

³⁵ GE 3, *supra* note 16, at 11.

³⁶ Tr. at 62.

³⁷ Tr. at 62-63.

³⁸ See, GE 4, *supra* note 17.

³⁹ AE I (TransUnion Credit Report, dated December 17, 2013).

⁴⁰ GE 3, *supra* note 16, at 12.

⁴¹ GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 16.

⁴² Tr. at 63.

⁴³ AE K (Account Activity Transaction Details, dated September 18, 2013).

⁴⁴ GE 3, *supra* note 16, at 12, 15.

intended to pay the account off by the end of the quarter (April 2012).⁴⁵ However, Applicant subsequently indicated he had paid off the account in 2009, shortly after receiving his income tax refund.⁴⁶ He submitted no documentation to support his contention that he had paid off the account. Applicant disputed the account status listed on his credit reports.⁴⁷ The account was listed in Applicant's December 2011 Combined Credit Report, but is not listed in his May 2013 Equifax credit report,⁴⁸ and is not listed in his December 2013 TransUnion credit report.⁴⁹ Accordingly, although there is no evidence that Applicant has paid the creditor, I conclude the account has been resolved.

(SOR ¶ 1.h.) This refers to an account with an insurance company with an unpaid balance of \$449 that was placed for collection in 2010, and transferred or sold to a collection agent.⁵⁰ Applicant changed insurance companies and advised his old company (the creditor). Rather than correcting the error, the creditor reported Applicant's failure to pay for continuing coverage as a delinquency. Applicant repeatedly contacted the creditor and was finally advised the matter could be cleared up upon receipt of proof of the new insurance coverage.⁵¹ Applicant disputed the account status listed on his credit reports.⁵² The account was listed in Applicant's December 2011 Combined Credit Report, but is not listed in his May 2013 Equifax credit report,⁵³ and is not listed in his December 2013 TransUnion credit report.⁵⁴ Nevertheless, in order to correct the entry on his credit reports and to satisfy proof of payment for his security clearance hearing, on September 18, 2013, Applicant paid the collection agent \$485.91.⁵⁵ The account has been resolved.

In handling his finances, Applicant acknowledged he made mistakes:⁵⁶

[N]ot disputing that I made poor financial decisions in the past. And I'm not trying to make excuses for them. I will point out that after a certain period of time I was no longer acquiring new debt, I stopped trying to borrow money, I stopped getting in debt. While I was not effectively, or

⁴⁵ GE 2 (Personal Subject Interview), *supra* note 7, at 5.

⁴⁶ Tr. at 64-65.

⁴⁷ GE 3, *supra* note 16, at 12, 15.

⁴⁸ See, GE 4, *supra* note 17.

⁴⁹ AE I, *supra* note 39.

⁵⁰ GE 3, *supra* note 16, at 15; GE 2 (Applicant's Answers to Interrogatories), *supra* note 2, at 16.

⁵¹ Tr. at 67.

⁵² GE 3, *supra* note 16, at 15.

⁵³ See, GE 4, *supra* note 17.

⁵⁴ AE I, *supra* note 39.

⁵⁵ AE J (Account Activity Transaction Details, dated September 18, 2013).

⁵⁶ Tr. at 89-90.

responsibly, dealing with debt that I had already incurred, I was no longer increasing that debt load. I realized I had a problem and I actively decided not to make it worse, not to exacerbate the situation. I have not incurred additional, or new, debt in several years. I believe that people do occasionally make mistakes, and do learn from them. It just took me several years to realize that I can't ignore the past. Instead of taking, instead of attempting ways to get completely out of it, bankruptcy, or things of that nature I did, albeit that it took a period of time, I did take them on head on, and worked with the companies, and am working to make it right. And I'm not trying to make excuses for poor judgment, just correct things that I have done.

Applicant has no other delinquent accounts. Applicant never received any formal financial counseling from a professional organization furnishing such counseling,⁵⁷ but he did receive assistance from his mother, a university professor, in establishing a budget to enable him to start repaying his debts.⁵⁸

Personal Conduct

On November 16, 2011, when Applicant completed his SF 86, he responded to a series of questions in § 26 (Delinquency Involving Routine Accounts) pertaining to the past seven years of his financial record, including: defaulted on any type of loan; bills or debts turned over to a collection agency; account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or been over 120 days delinquent on any debt. Applicant answered "no."⁵⁹ He certified that the responses were "true, complete, and correct" to the best of his knowledge,⁶⁰ but the responses to the above series of questions were, in fact, false.

Applicant subsequently denied intending to falsify his responses, and explained.⁶¹

I actually had spent a significant period of time sitting and entering each one of these. And same question was asked during my initial interview, and secondary interview, by the investigator. I honestly could not provide, I have no reason why they were not saved in the e-QIP, because I spent roughly days entering each one of these, because there were so many. There was no intent to hide any of this and as I believe I have responded, on my Statement of Reasons, I was completely aware that the Government would be getting a copy of my credit report. So there was no

⁵⁷ Tr. at 71.

⁵⁸ Tr. at 71-72.

⁵⁹ GE 1, *supra* note 1, at 37-38.

⁶⁰ GE 1, *supra* note 1, at signature page.

⁶¹ Tr. at 68-69.

intention to -- I had no intent to mislead the Government, because I knew this was information they were going to come to when I authorized them to -- the investigator, to pull my credit report to begin with.

He added that he had completed his application on-line through his home computer, and actually answered yes to the questions, and listed various accounts when he was preparing the SF 86. However, when he completed all the screens, prior to hitting the final button, he failed to go back and review the entire document.⁶²

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.”⁶³ 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.”⁶⁴

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.”⁶⁵ The Government initially has the burden of producing evidence to establish

⁶² Tr. at 69-70.

⁶³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁶⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁶⁵ “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).

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.⁶⁶

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."⁶⁷

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."⁶⁸ 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

At the outset, I note I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. I found that his explanations regarding his financial status and personal conduct are consistent, and considering the quality of the other information before me, have the solid resonance of truth.

⁶⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁶⁷ *Egan*, 484 U.S. at 531

⁶⁸ See Exec. Or. 10865 § 7.

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 had eight delinquent debts totaling \$17,770 that had been placed for collection or charged off, as reflected by either his 2011 or 2013 credit reports. 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*.⁶⁹ Under AG ¶ 20(e), financial security concerns may be mitigated where *the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is*

⁶⁹ 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)).

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(c) and 20(d) apply, AG ¶¶ 20(b) and 20(e) partially apply, and AG ¶ 20(a) does not apply. The nature, frequency, and relative recency of Applicant's financial difficulties since his September 2005 return from deployment make it difficult to conclude that it occurred "so long ago" or "was so infrequent." While some of Applicant's financial problems may have been partially caused by frivolous or irresponsible spending, he eventually took control of the situation and resolved to improve it. Some of his financial problems were essentially beyond his control. His misdiagnosis and treatment for depression rather than ADHD led to his being careless with money and making poor decisions. His daughter developed a medical issue and his wife had to quit her job. The situation occurred under such circumstances that it is unlikely to recur now that his medication has been adjusted, and he has developed a new appreciation for financial responsibility.

In addition, the accounting and reporting methods of the organizations involved in his student loans made it nearly impossible to track down individual student loans. The routine practice of one lender providing a student loan, consolidating it with another student loan, transferring it to a servicer, returning the loan via a claim to the U.S. Department of Education, and the subsequent transfer of the loan to a collection agent, all add to the confusion. In addition, the credit reporting agencies did not accurately list the current status of the student loans using the multiple classifications of: in a grace period status, deferred status, in forbearance status, in repayment status, in default and unresolved status, and in paid-in-full status. Despite all of the above, Applicant was finally able to identify the student loans listed in the SOR. One has been resolved, and the other is in the process of being resolved.

Once Applicant's diagnosis was corrected and the medication adjusted, Applicant acted responsibly by contacting the creditors and collection agents he could identify, by either paying off accounts in their entirety, settling accounts and paying off the settled balance, or entering repayment agreements and continuing to make the agreed payments. He also disputed two accounts, one because it had been paid, and another because he never dealt with the creditor. Those accounts were deleted from his credit reports, and no longer appear in his 2013 credit reports. Applicant has no other delinquent debts. Despite not having received any "formal" financial counseling, with a monthly remainder of \$1,159.38 available for discretionary savings or expenditures, there are clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances confronting him do not cast doubt on his current reliability, trustworthiness, or good judgment.⁷⁰

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

⁷⁰ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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.

The guideline notes a condition that could raise security concerns. Under AG ¶ 16(a), it is potentially disqualifying if there is

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.

As noted above, when Applicant responded to a series of questions in § 26 of his SF 86 pertaining to financial defaults, collections, accounts being charged off, suspended, or being over 120 days delinquent, Applicant answered “no.” He certified that the responses were “true, complete, and correct” to the best of his knowledge, but the responses to the above series of questions were, in fact, false. Applicant’s responses provide sufficient evidence to examine if his submission was a deliberate falsification, as alleged in the SOR, or merely the result of simple misunderstanding or carelessness by him. Applicant contended that when he worked on his SF 86 on-line through his home computer, he spent a significant period of time sitting and entering his responses, and answered “yes” to the questions, and listed his various delinquent accounts. However, when he completed all the screens, prior to hitting the final button, he failed to go back and review the entire document as recommended. He could not explain how the entries he made were not retained in the final version of his SF 86. Applicant denied the false responses were deliberate or an attempt to falsify the material facts.

I have considered Applicant’s background, military career, and current professional career in analyzing his actions. Applicant is a talented and experienced individual, and his explanations regarding the complexities of the e-QIP system are reasonable. Furthermore, even if the allegation was true, and he had intentionally falsified his responses and concealed the truth, such actions would be considered aberrant behavior out of character for him. AG ¶ 16(a) has not been established.

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.⁷¹

There is some evidence against mitigating Applicant's conduct. He became careless with money and made poor decisions, permitting accounts to become delinquent. As a result, accounts were placed for collection or charged off. Applicant incorrectly responded to a series of questions in his SF 86 pertaining to financial defaults, collections, accounts being charged off, suspended, or being over 120 days delinquent. He answered "no," when the true answer should have been "yes." He certified that the responses were "true, complete, and correct" to the best of his knowledge, but the responses to the series of questions were, in fact, false.

The mitigating evidence under the whole-person concept is more substantial. Applicant's misdiagnosis and treatment for depression rather than ADHD led to his being careless with money and making poor decisions. His daughter developed a medical issue and his wife had to quit her job. Some of his financial problems were essentially beyond his control. However, once he was correctly diagnosed and properly treated, he was able to focus on his financial situation. Applicant acted responsibly by contacting creditors and collection agents, and by either paying off accounts in their entirety, settling accounts and paying off the settled balance, or entering repayment agreements and continuing to make the agreed payments. He successfully disputed two accounts, one because it had been paid, and another because he never dealt with the creditor. Those accounts were deleted from his credit reports, and no longer appear in his 2013 credit reports. Applicant has no other delinquent debts. With a monthly remainder of \$1,159.38 available for discretionary savings or expenditures, and no delinquent accounts, there are clear indications that Applicant's financial problems are under control. The entire situation occurred under such circumstances that it is unlikely to recur and no longer casts doubt on Applicant's current reliability, trustworthiness, or good judgment.

⁷¹ 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).

Applicant could not explain how the entries he made were not retained in the final version of his SF 86. He claimed to have spent considerable time in entering the correct responses, and denied the incorrect responses were deliberate or an attempt to falsify the material facts. Applicant's explanations regarding the unexplained complexities of the e-QIP system are reasonable.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁷²

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 a "meaningful track record" of debt reduction and elimination. Applicant has made some significant efforts to resolve his accounts, as well as in describing the circumstances surrounding his incorrect responses in his SF 86. Applicant's actions may have been careless, but they were not intentional. 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

⁷² ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

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