



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-01735

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

06/02/2017

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations and personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On June 3, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On September 15, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an 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 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

¹ Item 3 (e-QIP, dated June 3, 2014).

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 as to when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated October 2, 2015, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. Applicant's response was considered incomplete, as he had failed to admit or deny the allegations in the SOR. On April 11, 2016, he submitted his Revised Answer to the SOR. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on May 2, 2016, 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. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on May 5, 2016. Applicant's response was due on June 4, 2016, but to date, no response has been received. The case was assigned to me on April 6, 2017.

Findings of Fact

In his Revised Answer to the SOR, Applicant admitted, without any comments, all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.o.) of the SOR. He denied the sole allegation pertaining to personal conduct (§ 2.a.). 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 53-year-old employee of a defense contractor. He has been a ground support equipment (GSE) mechanic with the company since March 2000. He is a June 1982 high school graduate. Applicant has never served with the U.S. military. He was granted a secret security clearance on an unspecified date, and it is unclear if he still has that clearance. Applicant was married in September 1992. Although Applicant did not list any children in his 2014 e-QIP, there is evidence in the case file that he has one college-age daughter.

Financial Considerations²

It is unclear what Applicant's finances were like before they deteriorated. His June 2014 credit report reveals a substantial number of delinquent accounts, including judgments filed as far back as 2009. Applicant failed to attribute his financial difficulties to any specific events that could be construed as being largely beyond Applicant's control.

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3, *supra* note 1; Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 25, 2014); Item 6 (Equifax Credit Report, dated January 30, 2015); Item 5 (Equifax Credit Report, dated August 31, 2015); Item 4 (Voluntary Petition, Chapter 13 Bankruptcy, dated June 5, 2015).

He neglected to describe any efforts he may have taken to contact his creditors to work out settlements or repayment arrangements; or any efforts to reflect that payments were ever made to his creditors or collection agents.

The SOR identified 14 purportedly delinquent debts that had been placed for collection, charged off, or filed as judgments, as generally reflected by his June 2014 credit report, his January 2015 credit report, or his August 2015 credit report. Applicant's 2015 Chapter 13 bankruptcy petition reflected liabilities totaling \$221,740.75. Based on the evidence listed in his bankruptcy petition and the credit reports, the current status of the debts alleged in the SOR are described below.

Those delinquent accounts, for which there is no evidence of resolution, pending resolution, or dispute, are as follows: delinquent federal taxes for the tax year 2011 in the amount of \$827.49 (SOR ¶ 1.b.); delinquent state taxes for the tax year 2013 in the amount of \$914.36 (SOR ¶ 1.c.); a judgment for \$3,445 filed in 2014 (SOR ¶ 1.d.); a judgment on a repossessed automobile for \$3,000 filed in 2009 (SOR ¶ 1.e.); a judgment for \$368 filed in 2010 (SOR ¶ 1.f.); a home mortgage loan that was past due in the amount of \$12,175 (SOR ¶ 1.g.); an automobile account that was past due \$864 (SOR ¶ 1.h.); three medical accounts with unpaid balances of \$229 (SOR ¶ 1.i.), \$100 (SOR ¶ 1.j.), and \$100 (SOR ¶ 1.k.); a cellular phone account with an unpaid balance of \$71 (SOR ¶ 1.l.); an insurance account with an unpaid balance of \$955 (SOR ¶ 1.m.); a cash advance account with an unpaid balance of \$526 (SOR ¶ 1.n.); and a telephone account with an unpaid balance of \$110 (SOR ¶ 1.o.).

At the time Applicant filed for bankruptcy in June 2015, he reported total assets of \$159,646 (including four automobiles) and total liabilities of \$221,740.75 (SOR ¶ 1.a.). He listed \$58,099.67 owed creditors holding secured claims (a home mortgage and an automobile loan); \$1,741.85 owed to creditors holding unsecured priority claims (state and federal taxes); and \$14,222.88 owed to 13 creditors holding unsecured nonpriority claims. His combined net family income was listed as \$5,000, with monthly expenses of \$4,565, leaving a monthly remainder of \$435 available for saving or spending. He also reported a \$10 expense for credit counseling related to his bankruptcy. There is no indication that a Chapter 13 payment plan had been approved by the Bankruptcy Court or that a Trustee had been assigned to the action. There is no evidence of any payments having been made during the period June 2015, when the petition was filed, and June 2016, when Applicant's response to the FORM was due. In the absence of pre-bankruptcy resolution efforts and a bankruptcy payment plan, it appears that Applicant's debts have not been resolved and his finances are not yet under control.

Personal Conduct

When Applicant completed his e-QIP on June 3, 2014, he responded to a series of questions in Section 26 – Financial Record which asked if he was currently delinquent on any Federal debt; or in the past seven years, he had: a judgment entered against him; defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; been over 120 days delinquent on any debt not previously entered, and if he was

currently over 120 days delinquent on any debt. Applicant answered “no” to all of those questions. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false for Applicant had multiple accounts that came within the parameters of the questions. In his Revised Answer to the SOR, he admitted having the accounts in collection, but he denied that he had intentionally falsified the fact, claiming that he “did not have a clear understanding or misread the question.”

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.”³ 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.”⁴

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.”⁵ 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

³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵ “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).

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.⁶

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."⁷

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."⁸ 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.

⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁷ *Egan*, 484 U.S. at 531.

⁸ See Exec. Or. 10865 § 7.

Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant’s financial problems initially arose some time prior to 2009, when a judgment was filed against him, and continued thereafter. Accounts became delinquent. Some accounts were charged off. Federal and state taxes were not paid. A vehicle was repossessed. 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.”⁹ 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 basis of the dispute or provides evidence of actions to resolve the issue.”

AG ¶¶ 20(a), 20(b), 20(d), and 20(e) do not apply. AG ¶ 20(c) minimally applies. Applicant failed to attribute his financial difficulties to any specific events that could be construed as being largely beyond Applicant’s control. He neglected to describe any efforts he may have taken to contact his creditors to work out settlements or repayment arrangements; or any efforts to reflect that payments were ever made to his creditors or collection agents. Other than the incomplete filing of his Chapter 13 Bankruptcy Petition, there is no evidence of any efforts, much less “good-faith” efforts to address his debts over a multi-year period.

Clearance decisions are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt

⁹ 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)).

alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time.

In this instance, there is no evidence of any pre-bankruptcy resolution actions or an approved Chapter 13 payment plan. Applicant offered no documentary evidence of a good-faith effort to resolve or dispute any of his accounts. Applicant had two years since the filing of his bankruptcy petition in June 2015, and approximately one and one-half years following receipt of the SOR, to resolve, or at least start to resolve, his delinquent accounts, but, to date, by his inaction, he has failed to do so. Applicant appears to have acted imprudently and irresponsibly.¹⁰ Applicant's actions, or inactions, under the circumstances confronting him, continue to cast doubt on his current reliability, trustworthiness, and good judgment.¹¹

Other than a brief mention that Applicant completed financial counseling in relation to the filing of his bankruptcy, there is no evidence to indicate that Applicant ever received substantial financial counseling with emphasis on credit management, budgeting, or debt consolidation. Based on the two-year-old information furnished in the Bankruptcy Petition, it is unclear if Applicant currently has any meaningful funds remaining at the end of each month for discretionary use or savings. There is no evidence to reflect that Applicant's financial problems are under control. To the contrary, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control.

Guideline E, Personal Conduct

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

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.

¹⁰ "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.

¹¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

The guideline notes several conditions 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.

On June 3, 2014, when Applicant completed his e-QIP, he falsely responded to a series of questions in Section 26 – Financial Record that asked about past and current delinquencies. He certified that the responses were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, false for Applicant had concealed multiple accounts that came within the parameters of the questions. In his Revised Answer to the SOR, he admitted having the accounts in collection, but he denied that he had intentionally falsified the fact, claiming that he “did not have a clear understanding or misread the question.” That explanation, without more, is simply too simplistic. His position is unreasonable and not credible. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct, but none of those mitigating conditions apply. His conduct shows a lack of honesty and integrity.

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.¹²

¹² 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).

There is some evidence in favor of mitigating Applicant's conduct. Applicant has been employed by the same defense contractor since March 2000. He was granted a secret security clearance on an unspecified date.

The disqualifying evidence under the whole-person concept is simply more substantial. As noted above, Applicant's financial problems commenced some time before 2009 and they continue to the present. Applicant offered no explanations as to how or why his accounts became delinquent. The SOR identified 14 purportedly delinquent debts that had been placed for collection, charged off, or filed as judgments. Applicant's 2015 bankruptcy petition reflected liabilities totaling \$221,740.75. There is no indication that a Chapter 13 payment plan had been approved by the Bankruptcy Court or that a Trustee had been assigned to the action. There is no evidence of any payments having been made during the period June 2015, when the petition was filed, and June 2016, when Applicant's response to the FORM was due. In the absence of pre-bankruptcy resolution efforts and a bankruptcy payment plan, it appears that Applicant's debts have not been resolved and his finances are not yet under control. In addition, although he owed delinquent federal and state taxes, had lost a vehicle to repossession, and had a substantial number of accounts in collection or charged off, Applicant falsely denied having any financial difficulties when he completed his e-QIP.

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

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [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.¹³

Applicant has demonstrated a poor track record of debt reduction and elimination efforts. He offered no evidence of pre-bankruptcy resolution efforts, and only an

¹³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

incomplete bankruptcy filing, without an established or approved payment plan. His delinquent debts seemed to have been ignored over a multi-year period. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's security worthiness. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct. 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 amended, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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