



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04554

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel

For Applicant: *Pro se*

03/30/2017

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On December 21, 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 November 24, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) 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 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

¹ GE 1 (e-QIP, dated December 21, 2014).

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 December 9, 2015. On December 19, 2015, he responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 22, 2016. The case was assigned to me on April 4, 2016. A Notice of Hearing was issued on April 7, 2016. I convened the hearing as scheduled on April 26, 2016.

During the hearing, 5 Government exhibits (GE) 1 through GE 5, and 30 Applicant exhibits (AE) A through AE AD, were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on May 5, 2016. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted additional documents, which were marked and admitted as AE AE through AE AM, without objection. The record closed on June 17, 2016.

Findings of Fact

In his Answer to the SOR, Applicant specifically admitted only one of the factual allegations pertaining to financial considerations (§ 1.c.) of the SOR. Applicant's admissions and comments 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 36-year-old employee of a defense contractor. He has been a project engineer with the company since April 2010. He was previously a systems engineer with another company from April 2006 until March 2010. He received a General Educational Development (GED) diploma in 1997 or 1998; an associate's degree in 1999; and a bachelor's degree in 2005. He has never served in the U.S. military. He has held a secret security clearance since 2008. Applicant was married in 2006. He has two children (a daughter born in 2008 and a son born in 2010).

Financial Considerations²

There was nothing unusual about Applicant's finances until the period 2008 through 2010 when a number of factors contributed to some degree of financial stress. With the birth of his two children, the family increased from two to four persons. The loss of his wife's income in 2008, along with the increased family expenses, significantly impacted his entire budget. Exacerbating the situation was the fact that the homeowner association (HOA) fees on the residence he purchased in 2006 rose five to six percent

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 1; GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 8, 2015); GE 2 (Equifax Credit Report, dated November 6, 2015); GE 5 (Equifax Credit Report, dated March 15, 2016); GE 4 (Personal Subject Interview, dated March 16, 2015); Applicant's Answer to the SOR, dated December 19, 2015. More recent information can be found in the exhibits furnished and individually identified.

each year, from \$250 to about \$380 – an amount greater than his salary raises. In addition, when he obtained his current position in 2010, he had to relocate his residence to a new city nearly 380 miles away. He simply could not pay the extra assessments and maintain two residences. In 2009 or 2010, Applicant simply stopped paying his HOA fees. In March 2010, the HOA sued Applicant and obtained a \$1,755 judgment. In October 2010, they sued him again and obtained a \$4,360 judgment.³ Since Applicant no longer resided in the location of the residence or HOA, he was unaware of the lawsuits or the judgments.⁴ By November 2011, the unpaid balance, including late fees, had risen to \$8,719.⁵ In early 2014, the HOA placed a lien on the residence, claiming Applicant owed the HOA about \$18,000.

At some point in 2011, Applicant learned of the judgments and the lien, and he contacted the creditor in an effort to resolve the matter. At the time, he was unable to make a large lump-sum payment, but when he was able to do so, he made one \$10,000 lump-sum payment, and he entered into a repayment agreement under which he agreed to pay the HOA \$680 each month until the entire amount is paid off.⁶ On March 23, 2015 – eight months before the SOR was issued – Applicant used his income tax refund and paid the HOA \$13,578, covering the arrears and \$7,228.59 in legal fees.⁷ He also continued to make his monthly HOA payments until he eventually sold the property.⁸ On May 8, 2015, a Stipulation Discontinuing Action with Prejudice and a Stipulation Cancelling Notice of Pendency of Action were issued, signifying that the matter had been satisfied and the lien was cancelled.⁹ Considering the inaccuracy in the Equifax credit reports, and the discontinued action by the HOA, it appears that the judgments (or one judgment and one lien) alleged in SOR ¶¶ 1.a. and 1.b. were resolved in May 2015 – six months before the SOR was issued. Nevertheless, Applicant's 2015 and 2016 credit reports continued to report the judgments as unsatisfied.

Another result of Applicant's financial issues was his inability to continue making his monthly mortgage payments on the residence associated with the HOA. He remained in constant communication with the loan servicing company, but his efforts to resolve the matter were repeatedly unsuccessful. His October 2014 request for mortgage assistance still had not been resolved as of July 2015.¹⁰ In January 2015, Applicant listed the house

³ GE 3, *supra* note 2, at 5; GE 5, *supra* note 2, at 1; GE 4, *supra* note 2, at 7-8; Applicant's Answer to the SOR, *supra* note 2, at 1. Strangely, both Experian and TransUnion reported the \$4,360 judgment by the HOA, but Equifax reported it as a medical account.

⁴ GE 4, *supra* note 2, at 8; Tr. at 42-43.

⁵ AE E (Statement, dated November 21, 2011). It should be noted that the Statement was mailed to the residence address associated with the HOA, and not to Applicant's new address.

⁶ GE 4, *supra* note 2, at 8.

⁷ AE F (Cancelled Check, dated March 23, 2015); AE G (Statement, dated April 16, 2015); Tr. at 46.

⁸ AE G, *supra* note 7; AE AI (Letter, dated May 22, 2016).

⁹ AE A (Stipulation Discontinuing Action with Prejudice and a Stipulation Cancelling Notice of Pendency of Action, dated May 8, 2015).

¹⁰ AE J (Letter, dated October 15, 2014); AE K (Letter, dated July 7, 2015).

for sale with a real estate agent.¹¹ The original listing price was \$235,000, but it was reduced to \$225,000. He repeatedly sought approval for a short sale of the property, but the loan servicing company kept delaying a decision, requesting additional information, and potential purchasers withdrew their offers.¹² An April 2015 offer for \$210,000¹³ was seemingly ignored by the loan serving company.¹⁴ In November 2015, the loan was transferred to another servicing agent without any final action regarding a short sale being made.¹⁵ The new loan servicing agent on the first mortgage finally approved a short sale request for \$170,184 on April 11, 2016.¹⁶ However, during the delay, Applicant sought assistance from the loan servicing company on the second mortgage, and on March 21, 2016, it approved a short sale for \$196,500.¹⁷ The settlement on the property was completed on June 13, 2016, with the established and approved price.¹⁸ The account alleged in SOR ¶ 1.c. has been resolved.

While attempting to resolve his mortgage issues, in 2009 and 2011, Applicant received financial guidance from one of his loan servicing companies.¹⁹ In May 2016, Applicant submitted a Personal Financial Statement reflecting a family net monthly income of \$4,251; monthly expenses of \$3,200; and a monthly remainder of \$316.93 available for saving or spending.²⁰ However, Applicant noted that his \$380 monthly HOA payments would cease once his house sold. Since the house was sold the following month, Applicant's monthly remainder is now \$696.93. He also reported he has \$4,000 in savings, \$1,200 in checking, and \$74,000 in his retirement 401(k). Applicant has made substantial progress in resolving his delinquent accounts. He keeps a budget. There are no remaining delinquent debts. It appears that Applicant's financial status has improved significantly, and that his financial problems are finally under control.

Work Performance and Character References

Senior management of Applicant's employer, including the president of a division, the vice-president of engineering, the director of engineering, the vice-president – chief

¹¹ AE M (E-mail, dated January 29, 2015); AE N (Listing Agreement and Property Information, various dates).

¹² AE L (Short Sales Application Acknowledgement, dated September 21, 2015).

¹³ AE P (Sales Agreement, dated April 11, 2015)

¹⁴ AE Q (E-mails, various dates).

¹⁵ AE R (Letter, dated November 18, 2015).

¹⁶ AE V (Letter, dated April 11, 2016).

¹⁷ AE U (Short Sale Contingent Approval, dated March 21, 2016); AE AM (Short Sale Approval, dated June 1, 2016).

¹⁸ AE AL (Settlement Statement (HUD-1), dated June 13, 2016).

¹⁹ Tr. at 69.

²⁰ AE AF (Personal Financial Statement, dated May 4, 2016).

technology officer, and the director of contract administration – facility security officer, are all extremely supportive of him. They generally characterize Applicant with terms such as honesty, integrity, trustworthy, highly professional, respected, energetic, compassionate, positive attitude, well-liked, reliable, personable, and unpretentious. They not only support his retention of a security clearance, but also his desire to advance through additional graduate study. Applicant is an excellent troubleshooter who is respected and well liked by management, coworkers, and the customer base.²¹ Applicant's pastor reported that Applicant is active in his church, serving as a volunteer with children's programs, a community kitchen, as well as in a variety of other congregation positions. He considers Applicant to be "a man of his word, a man of integrity, and a man of faith" who is trusted and held in high esteem.²²

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."²³ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."²⁴

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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.

²¹ AE AB(Character Reference, undated); AE AC (Character Reference, dated April 7, 2016); AE AD (Character Reference, dated April 8, 2016); AE X (Character Reference, dated September 29, 2015); AE W (Character Reference, dated August 13, 2015).

²² AE AA (Character Reference, dated April 21, 2016).

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

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

In the decision-making process, facts must be established by “substantial evidence.”²⁵ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.²⁶

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”²⁷

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”²⁸ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are 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:

²⁵ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

²⁷ *Egan*, 484 U.S. at 531.

²⁸ See Exec. Or. 10865 § 7.

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), a "history of not meeting financial obligations" may raise security concerns. Applicant's significant financial problems initially arose in 2008, and increased during the following few years. Several accounts became delinquent. Two judgments were filed and a lien was placed on his residence. 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."²⁹

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) all apply. Applicant's financial problems were not caused by his personal frivolous or irresponsible spending. Also, it does not appear that he spent beyond his means. Instead, his financial problems arose during a period when the family income dropped and his family grew from two to four individuals. His HOA fees increased. When he obtained a new job in another city, he found it difficult to maintain the expenses for two houses with the reduced income. He was unaware that the lawsuits

²⁹ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that 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)).

had been filed against him, having already moved to a different part of the state. Likewise, he was not aware that judgments had been filed or that a lien was placed against his old residence. When he eventually learned of his financial situation, he reached out to the HOA in an effort to resolve the judgments and lien. When he was able to do so, he made several lump-sum payments and entered into a repayment plan. He satisfied the judgments and they were cancelled, and the lien was withdrawn, eight months before the SOR was issued. Unfortunately for Applicant, the status of the resolved judgments and lien were never corrected in the credit reports, and his 2015 and 2016 credit reports still reflect that the judgments are unsatisfied.

Applicant's difficulties with his initial residence were caused by having a new job and a new residence in another part of the state. It was difficult to pay for both houses simultaneously, and Applicant sought assistance from the loan servicing company. His efforts to resolve the issues associated with the initial residence were unsuccessful when the loan servicing company was not timely in their responses and actions. Applicant listed the house for sale in January 2015, and he repeatedly sought approval for a short sale. The request was generally met with delays. Offers were made, but either ignored or rejected. Other offers were withdrawn because of unresponsive inaction by the loan servicing company. Finally, approval was granted by the loan servicing companies representing both the first and second mortgages. The property was sold on June 13, 2016, and Applicant has no deficiency.

Applicant's financial status has improved significantly. He has no other delinquent debts. He received financial counseling. Applicant's financial problems are finally under control. Considering the impediments placed in his way by the loan servicing company in resolving his mortgage issues, Applicant's perseverance and successful efforts reflect that he acted prudently and responsibly. Applicant's actions, under the circumstances confronting him, no longer cast doubt on his current reliability, trustworthiness, and good judgment.³⁰

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.

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

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.³¹

There is some evidence against mitigating Applicant's conduct. Applicant failed to maintain his normal monthly payments regarding his mortgages and HOA assessments. Judgments were filed against him by the HOA, a lien was placed on his residence, and he fell behind in paying one of his mortgages on his initial residence.

The mitigating evidence under the whole-person concept is more substantial. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. He is a well-respected employee and member of the community. Applicant's financial problems commenced when his wife dropped out of the work force to start having children, and it got worse when he obtained a new position elsewhere in the state. The increased HOA fees and the expenses of two residences were simply too much for him to handle simultaneously. Without the financial resources to maintain his HOA status and a mortgage in a current status, they became delinquent. He chose not to ignore his delinquent debts. Instead, he extended himself to resolve the judgments well before the SOR was issued. Applicant's efforts have been successful. He resolved his HOA issues and his mortgages issues. Applicant's financial status has improved significantly. Applicant did not simply promise to address his debts, he actually did so.³²

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

³¹ 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).

³² The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

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.³³

Applicant has demonstrated a “meaningful track record” of debt reduction and elimination efforts. He keeps track of his expenses and maintains a budget. Overall, the evidence leaves me without questions or doubts as to Applicant’s security worthiness. 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
Subparagraphs 1.a through 1.c:	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

³³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).