



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



In the matter of:

---

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 15-05478

**Appearances**

For Government: Andre M. Gregorian, Esquire, Department Counsel

For Applicant: *Pro se*

06/05/2017

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On March 6, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On May 16, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 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

---

<sup>1</sup> Item 2 (e-QIP, dated March 6, 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 June 24, 2016, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on August 8, 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 August 17, 2016. Applicant's response was due on September 16, 2016, and he timely submitted a response accompanied by several documents. The case was assigned to me on May 3, 2017.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted, with comments, two of the factual allegations pertaining to financial considerations (§§ 1.a. and 1.b.) of the SOR. He denied §§ 1.c. and 1.d. 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 54-year-old employee of a defense contractor. He has been a financial planner with the company since October 1987. From June 2005 until May 2011, Applicant worked part-time as a real estate agent in order to generate additional income for investment purposes. He is a 1981 high school graduate, with a bachelor's degree received in 1986, and a master's degree received in 1997. He has never served in the U.S. military. Applicant was granted a secret security clearance in July 2005. He married his domestic partner in June 2015. He has no children.

### **Financial Considerations<sup>2</sup>**

Applicant contends that his financial difficulties arose in 2008 when the local real estate market collapsed. He had previously invested in real estate, purchasing a second home while renting out the original one. With the evaporating real estate market, Applicant was unable to generate income from sales, and in 2009, his income from his real estate activities – 25 percent of his overall income – disappeared. His renters moved out of his rental property, and when the property remained vacant for a few months, he lowered his rental standards to rent to less financially qualified renters. Accounts, including the

---

<sup>2</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2, *supra* note 1; Item 3 (Personal Subject Interview, dated March 28, 2014); Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 18, 2014); Item 5 (Equifax Credit Report, dated March 9, 2016); Item 2 (Applicant's Answer to the SOR, dated June 24, 2016); and Applicant's Response to the FORM, dated September 15, 2016.

mortgage on his residence, became delinquent. Some creditors declined to work out repayment arrangements, and garnishments took place. A review of his March 2014 credit report reveals that Applicant settled a number of delinquent accounts for less than the full balance, and he paid off other accounts. Some accounts were charged off, and still others, sold to debt purchasers.

During the period 2009 through 2013, Applicant did not have any federal or state income taxes withheld, and because he had insufficient funds available to pay his income taxes, he did not file his federal or state income tax returns. The Internal Revenue Service (IRS) calculated his unpaid federal income taxes for the period and determined that Applicant owed \$98,166. In February 2015, the IRS filed a tax lien for that amount. Applicant had a tax preparation firm file his federal income tax returns, and he obtained legal representation to assist him with his income tax issues. In February 2015 – over a year before the SOR was issued – Applicant and the IRS established an installment agreement under which Applicant agreed to pay \$120 for a user fee and a monthly payment of \$66 for his federal tax debt for the tax years 2009 through 2013. While Applicant failed to submit any documentation to support his contention that he has a history of 20 months (as of September 2016) of making his monthly payments, based on his overall actions in resolving his various accounts, I am confident that he has made his modest monthly payments.

On April 11, 2014 – more than two years before the SOR was issued – Applicant filed his federal income tax returns for 2009 (reflecting an adjusted gross income of \$100,390); 2010 (reflecting an adjusted gross income of \$90,837); 2011 (reflecting an adjusted gross income of \$103,034); 2012 (reflecting an adjusted gross income of \$110,797); and 2013 (reflecting an adjusted gross income of \$108,806).

Applicant contends that he filed his state income tax returns and paid all of his state income taxes for the tax years in question, but he failed to submit any documentation to support his contention that he has done so. However, he did submit a letter from the state department of revenue, dated August 19, 2015, in which he was issued a refund of \$463.06 for overpaid taxes.

In addition to his alleged failure to timely file his state and federal income tax returns, the SOR identified two purportedly delinquent debts that had been placed for collection. Those two debts, totaling approximately \$27,888, their current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

There is a department store charge account with an unpaid balance of \$166 that was placed for collection in 2014. In his Answer to the SOR, Applicant acknowledged that he did have a balance over eight years ago, but contended that the account was resolved "several years ago." He claims he obtained a credit report and there is no balance appearing in it. Applicant contends that the absence of the account on a credit report "affirms that this was paid." Applicant failed to submit documentation, such as a receipt or cancelled check, to support his contention that he had paid the creditor. Furthermore, Applicant's conclusion that the absence of the account from the credit report affirms his

position that the account was paid, is unsustainable. Accounts are removed from credit reports for a variety of reasons, including successful disputes and age or staleness. Applicant also failed to submit a copy of the credit report upon which he was relying for his conclusion. Accordingly, I conclude that SOR ¶ 1.c. has not been resolved. Nevertheless, the amount in issue is considered of little significance, security-wise.

There is an automobile loan with a high credit of \$34,430, past due balance of \$651, and unpaid balance of \$27,722 that was placed for collection in 2015. In his Answer to the SOR, Applicant indicated that he was involved in an automobile accident in May 2015, and that delays in insurance payments caused a delay in paying on the account before it became delinquent. He denied the loan went into default. The loan payment was only 30 days late after the accident. Applicant's insurance carrier paid the lien holder \$18,900.40 on May 14, 2015 – two days after the accident – and his gap insurer paid the lien holder \$6,785 shortly thereafter. On July 20, 2015 – eight months before the SOR was issued – Applicant's extended warranty carrier paid the lien holder \$1,448. In other words, the lien holder was paid \$27,134.28 by July 20, 2015. Thus, I conclude that the account alleged in SOR ¶ 1.d. has been resolved.

Applicant did not submit a Personal Financial Statement to reflect his net monthly income; monthly expenses; or any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of any financial counseling, other than his comments pertaining to the assistance he received with respect to his income tax issues. There is no evidence of any other delinquent accounts, and it appears that Applicant has already resolved many other formerly delinquent ones. Applicant acknowledged that his finances improved in 2014. Applicant's finances now seem to be under control.

## **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."<sup>3</sup> 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."<sup>4</sup>

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.

---

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

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

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."<sup>5</sup> 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.<sup>6</sup>

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."<sup>7</sup>

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."<sup>8</sup> 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.

---

<sup>5</sup> "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 (4<sup>th</sup> Cir. 1994).

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

<sup>7</sup> *Egan*, 484 U.S. at 531.

<sup>8</sup> See Exec. Or. 10865 § 7.

## Analysis

### Guideline F, Financial Considerations

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Under AG ¶ 19(g), security concerns may be raised when there is a "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same." Applicant's financial problems initially arose some time in 2008, and they continued thereafter. Accounts became delinquent. State and federal income tax returns were not timely filed, and taxes were not paid. Accounts became delinquent. AG ¶¶ 19(a), 19(c), and 19(g) 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."<sup>9</sup>

---

<sup>9</sup> 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].

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. Applicant attributed his financial difficulties to the loss of a significant portion of his income as a result of the devastation to the local real estate market during the national economic recession that occurred during 2007 through 2009, with continuing negative impact over the ensuing years. The inability to attract real estate clients to generate listings and sales, as well as the loss of renters from his own rental property, caused him a loss of substantial funds that might enable him to continue paying his monthly bills. The situation was unexpected and largely beyond Applicant's control. Unable to keep his accounts current, or even pay his federal or state income taxes, accounts became delinquent and were placed for collection, and a federal tax lien was filed. Applicant reached out to his creditors in a good-faith effort to resolve his debts, and while some creditors agreed to work with him, others failed to do so. Applicant's salary was besieged by garnishments. Nevertheless, Applicant was able to resolve a significant number of his debts, either by settlements for less than the full balance, and he paid off other accounts. In April 2014 – more than two years before the SOR was issued – Applicant filed his federal income tax returns. In February 2015 – over a year before the SOR was issued – Applicant and the IRS established an installment agreement. Because Applicant commenced the long road back to financial stability well before the SOR was issued, it is clear that he was making positive efforts to resolve his debts.

As noted above, there is no evidence of any financial counseling, other than Applicant's comments pertaining to the assistance he received with respect to his income tax issues. Perhaps that is the explanation for his erroneous belief that his inability to pay his income taxes was a justification for not timely filing his income tax returns. There is no evidence of any other delinquent accounts. Applicant has already resolved many other formerly delinquent ones. Applicant acknowledged that his finances improved in 2014. Despite the absence of any financial documentation from Applicant regarding his current finances, it is still possible to conclude that his financial problems are under control.

With respect to Applicant's state and federal income tax returns for the tax years 2009 through 2013 that were not timely filed, the DOHA Appeal Board has commented:<sup>10</sup>

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment

---

(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)).

<sup>10</sup> ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

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 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. There is substantial evidence of not only Applicant's plan, but of his successful resolution actions. In this instance, Applicant appears to have eventually acted prudently and responsibly.<sup>11</sup> Applicant's actions well before the SOR was issued, under the circumstances confronting him, no longer cast doubt on his current reliability, trustworthiness, and good judgment.<sup>12</sup>

### **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

---

<sup>11</sup> "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.

<sup>12</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).



evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>13</sup>

There is some evidence against mitigating Applicant's conduct. At some point in 2008, Applicant's accounts starting becoming delinquent. He failed to timely file his federal and state income tax returns for the tax years 2009 through 2013. A tax lien was filed. Garnishments flourished.

The mitigating evidence under the whole-person concept is simply more substantial. There is no evidence of misuse of information technology systems, or mishandling protected information. He has been employed by the same defense contractor since October 1987. As noted above, Applicant's financial problems initially arose because of the loss of a significant portion of his income as a result of the devastation to the local real estate market during the national economic recession that occurred during 2007 through 2009, with continuing negative impact over the ensuing years. Unable to keep his accounts current, or even pay his federal or state income taxes, accounts became delinquent and were placed for collection, and a federal tax lien was filed. Applicant reached out to his creditors in a good-faith effort to resolve his debts, and while some creditors agreed to work with him, others failed to do so. Applicant resolved a significant number of his debts by settlements for less than the full balance or by paying the entire balance. In April 2014 – more than two years before the SOR was issued – Applicant filed his federal income tax returns. In February 2015 – over a year before the SOR was issued – Applicant and the IRS established an installment agreement. He has now embraced the paradigm of timely filing income tax returns. Because Applicant commenced the long road back to financial stability well before the SOR was issued, it is clear that he was making positive efforts to resolve his debts.

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,

---

<sup>13</sup> 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).

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.<sup>14</sup>

Applicant has clearly demonstrated a “meaningful track record” of debt reduction and elimination efforts. After overcoming the substantial loss of income during the economic recession in 2007 through 2009, and the ensuing years, Applicant approached his creditors and started resolving his debts and filing his income tax returns. He did so well before the SOR was issued. He has no other delinquent debts. It appears that Applicant’s financial status has significantly improved, and that his financial problems are under control.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Guidelines. For the reasons stated, I conclude he is eligible for access to classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as amended, 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.d:	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

---

<sup>14</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).