



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-05977

Appearances

For Government: Ross Hyams, Esquire, Department Counsel

For Applicant: *Pro se*

05/15/2017

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On December 11, 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 February 27, 2016, 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

¹ Item 4 (e-QIP, dated December 11, 2014).

SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear as to when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated March 30, 2016, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing.² 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 June 30, 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 July 7, 2016. Applicant's response was due on August 6, 2016, but to date, no response has been received. The case was assigned to me on May 3, 2017.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, a number of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.c., and 1.h.) of the SOR. He denied §§ 1.d. through 1.g. 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 42-year-old employee of a defense contractor. He has been a supervisor with the company since December 2014. He also held positions as a field engineer (2009 – 2014) and a lineman (2001 – 2009) with other employers. He is a 1993 high school graduate, and received an associate's degree in 2010. Applicant served in the inactive Naval Reserve from September 1993 until he was honorably discharged in August 1999. He failed to submit any additional information pertaining to his period of military service. In this regard, there are no identified awards and decorations. It is unclear if he was ever granted a security clearance. Applicant was married in May 2001 and divorced in August 2006. He has two children, born in 2000 and 2003.

Financial Considerations³

It is unclear what Applicant's finances were like before they deteriorated. In December 2014, Applicant attributed his financial difficulties to a combination of events

² Item 3 (Answer to the SOR, dated March 30, 2016).

³ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3, *supra* note 2; Item 4, *supra* note 1; Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 30, 2014); Item 7 (Equifax Credit Report, dated June 29, 2015); Item 8 (Equifax Credit Report, dated January 5, 2016); Item 5 (Personal Subject Interview, dated April 1, 2015).

associated with his divorce (which occurred in 2006), an unexplained household income decrease, and court-ordered child support payments. In March 2011, he was unable to maintain his student loan payments regarding an estimated \$42,000 student loan. A variety of accounts became delinquent. They were placed for collection, and some accounts were charged off. State and federal income tax returns for the tax years 2010 and 2011 were not timely filed. In April 2015, Applicant contended he had previously paid off or otherwise settled a number of accounts with the assistance of a credit repair company, and he denied knowledge of other delinquent accounts or indicated that they had been previously resolved.

In addition to his alleged failure to timely file his state and federal income tax returns for the tax years 2010 and 2011, the SOR identified seven purportedly delinquent debts that had been placed for collection or charged off, as generally reflected by his December 2014 credit report, his June 2015 credit report, or his January 2016 credit report. Those debts, totaling approximately \$73,860, their current status, according to the credit reports, other evidence submitted by the Government, and Applicant's comments regarding same, are described below.

There is a satellite television account with an unpaid balance of \$353 that was placed for collection, disputed by Applicant, and purportedly settled by him (SOR ¶ 1.a).⁴ There is a home mortgage account with a high credit of \$136,320 that was \$1,321 past due with a remaining balance of \$139,484 that was placed for collection, disputed by Applicant, and was supposed to be settled by him in April 2016 (SOR ¶ 1.b).⁵ There is a student loan account with a high credit and past-due balance of \$19,691 that was placed for collection and transferred, disputed by Applicant, and was supposed to be settled by Applicant's credit repair company (SOR ¶ 1.c).⁶ There is a second mortgage account with an original high credit of \$34,080 that was sold to another company, eventually placed for collection with a high credit and past-due balance of \$50,872, charged off, and disputed by Applicant. Applicant subsequently stated that he was not aware that the account remained open when he refinanced his first mortgage (SOR ¶ 1.d).⁷ There is a jewelry store charge account with a \$500 credit limit and a high credit and unpaid balance of \$686 that was placed for collection, charged off, and disputed by Applicant. He contended that the account was settled two years earlier (SOR ¶ 1.e).⁸ There is a telephone account with an unpaid balance of \$405 that was placed for collection in 2012. Applicant claimed to be unaware of the account (SOR ¶ 1.f).⁹ There is a medical account

⁴ Item 7, *supra* note 3, at 2; Item 8, *supra* note 3, at 1; Item 3, *supra* note 2, at 1.

⁵ Item 6, *supra* note 3, at 5; Item 7, *supra* note 3, at 1; Item 8, *supra* note 3, at 1; Item 3, *supra* note 2, at 1.

⁶ Item 6, *supra* note 3, at 9, 11; Item 7, *supra* note 3, at 2; Item 8, *supra* note 3, at 3; Item 3, *supra* note 2, at 1.

⁷ Item 6, *supra* note 3, at 10; Item 7, *supra* note 3, at 1-2; Item 8, *supra* note 3, at 3, 5; Item 3, *supra* note 2, at 2.

⁸ Item 6, *supra* note 3, at 11; Item 8, *supra* note 3, at 6; Item 3, *supra* note 2, at 2.

⁹ Item 6, *supra* note 3, at 12; Item 3, *supra* note 2, at 2.

with an unpaid balance of \$532 that was placed for collection in 2013. Applicant claimed to be unaware of the account (SOR ¶ 1.g.).¹⁰

There appear to be several common features regarding Applicant's delinquent accounts described above. There is no documentary evidence submitted by Applicant that supports a contention that he reached out to any creditor in an effort to resolve his accounts. His credit repair company unsuccessfully disputed the majority of the accounts, but Applicant offered no stated or documented bases for the disputes. There is no documentation submitted by Applicant to reflect the establishment of repayment arrangements or any payments made related to any of the accounts, including those that Applicant contended he had either settled or paid off. In this regard, there are no receipts, cancelled checks, account statements, or creditor acknowledgments. Accordingly, I conclude that the accounts have not been resolved.

With respect to the state and federal income tax returns for the tax years 2010 and 2011, in April 2015, Applicant contended that he had resolved those issues when he attempted to work out a repayment plan and paid all outstanding income taxes by December 2014. Once again, Applicant failed to submit any documentation, such as installment arrangements, receipts, cancelled checks, or accounts statements, to support his contentions. Accordingly, I conclude that the income tax returns have not been filed.

In April 2015, an investigator from the U.S. Office of Personnel Management (OPM) regarding his financial situation interviewed Applicant. Each of the above accounts was discussed. Despite the passage of approximately two years since that interview, Applicant failed to take any positive action either to resolve the delinquent accounts or to obtain documentation to support the actions he contends he took with respect to those efforts.

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 comment that the credit repair company was assisting him to better understand how to manage credit. It appears that Applicant's finances are not yet 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."¹¹ 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

¹⁰ Item 6, *supra* note 3, at 12; Item 3, *supra* note 2, at 2.

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”¹²

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.”¹³ 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.¹⁴

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.”¹⁵

¹² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹³ “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).

¹⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁵ *Egan*, 484 U.S. at 531.

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.”¹⁶ 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. 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 before March 2011, and they continued thereafter. Accounts became delinquent. State and federal income tax returns were not timely filed. 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

¹⁶ See Exec. Or. 10865 § 7.

a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹⁷ 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(c), 20(d), and 20(e) do not apply. AG ¶ 20(b) minimally applies. The nature, frequency, and recency of Applicant’s continuing financial difficulties make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant attributed his financial difficulties to a combination of events associated with his divorce (which occurred in 2006), an unexplained household income decrease, and court-ordered child support payments, without any other explanations or specifics. Without further explanations, it is impossible to determine if any of those factors actually existed, and if they did exist, if they were largely beyond Applicant’s control. With the absence of documentary evidence, and very little description from Applicant as to his resolution efforts, Applicant offered little evidence of a good-faith effort to resolve any of his debts. To the contrary, because of his disputes regarding most of his delinquent accounts, it appears that Applicant was more interested in wiping the slate clean with respect to his credit history rather than making positive efforts to resolve his debts.

In the absence of any financial information from Applicant regarding his current finances, it is impossible to conclude that his financial problems are under control. As noted above, there is no evidence of any financial counseling, other than his comment that the credit repair company was assisting him to better understand how to manage credit. That particular company specializes in disputing accounts to remove them from credit reports, and without documentation setting forth their specific relationship with Applicant and detailing the services they provided him, there is little valid evidence of the existence of financial counseling.

With respect to Applicant’s state and federal income tax returns for the tax years 2010 and 2011 that were not timely filed, the DOHA Appeal Board has commented:¹⁸

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary

¹⁷ 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)).

¹⁸ ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016).

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 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. Applicant has offered no evidence of a budget or a plan.

In this instance, there are purported actions taken, but there is no documentation to support the existence of any of Applicant's claimed resolution actions, or payments. He failed to submit receipts, checks, account statements, letters, proposed repayment plans, or evidence of disputes to support any of his contentions. As for his disputes, Applicant merely "disputed" certain accounts, but he failed to articulate a reasonable basis to dispute the legitimacy of those debts, and failed to submit documentation reflecting the disputes, reasons for the disputes, or the results of the disputes. In sum, Applicant offered no documentary evidence of a good-faith effort to resolve or dispute any of his accounts. Applicant had approximately two years following his OPM interview 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.¹⁹ Applicant's actions, or inactions, under the circumstances confronting him, continue to cast doubt on his current reliability, trustworthiness, and good judgment.²⁰

¹⁹ "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.

²⁰ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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.²¹

There is some evidence in favor of mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, or mishandling protected information. He is an honorably discharged former inactive reserve member of the U.S. Naval Reserve. He has been employed by his defense contractor since September 2014, and before that was employed by other employers since 2001. He candidly acknowledged having a financial difficulty with one creditor when he completed his e-QIP.

The disqualifying evidence under the whole-person concept is simply more substantial. As noted above, Applicant's financial problems initially arose some time before March 2011, and they continued thereafter. Accounts became delinquent. State and federal income tax returns were not timely filed. Of the seven delinquent accounts alleged in the SOR there is no documentary evidence to support his contentions that some accounts were paid off or settled, or that other accounts are in the process of being resolved. In addition, other than Applicant's statements, there is no documentation to support his contentions that his state and federal income tax returns for the tax years 2010 and 2011 have been filed. Other than generally referring to a number of factors that he claimed caused his financial problems, Applicant offered no meaningful explanations as to how those individual factors caused specific financial problems. In addition, there are no explanations for his failure to maintain his accounts in a current status, or why he failed to timely file his income tax returns. Based on the evidence presented, Applicant failed to take any positive action to resolve his accounts. There is no evidence of a budget, financial counseling, or that his finances are under control.

²¹ 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 has demonstrated an extremely poor track record of debt reduction and elimination efforts. There is no evidence that Applicant established a plan to resolve his financial problems, or that he has taken significant actions to implement such a plan. His delinquent debts seemed to have been either ignored or simply disputed without a reasonable basis. 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. 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.h: 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