



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-07633

Appearances

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

08/15/2017

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On May 23, 2015, 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 17, 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) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.² The SOR

¹ GE 1 (e-QIP, dated May 23, 2015).

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

Applicant received the SOR on April 4, 2016. On April 19, 2016, he responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 19, 2016. The case was assigned to me on September 19, 2016. A Notice of Hearing was issued on February 22, 2017. I convened the hearing as scheduled on March 13, 2017.

During the hearing, two Government exhibits (GE) 1 and GE 2, one Administrative exhibit, and one Applicant exhibit (AE) A were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on March 21, 2017. I kept the record open to enable Applicant to supplement it. He failed to take advantage of that opportunity. The record closed on April 17, 2017.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, many of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.c., 1.e. through 1.h., 1.j., 1.k., and 1.o. through 1.x.) and personal conduct (§§ 2.a. and 2.b.) 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 27-year-old employee of a defense contractor. He has been an alarm monitor with his employer since May 2015. He owned a lawn care company and previously had several relatively diverse short-term full-time and part-time positions with various employers. He is a 2008 high school graduate with four semesters of college credits, but no degree. He has never served with the U.S. military. He currently holds an interim secret security clearance. Applicant has never been married. He has no children.

Financial Considerations³

The SOR identified 26 purportedly delinquent debts that had been placed for collection or charged off, as generally reflected by his June 2015 credit report. Those debts total approximately \$25,554. Their current status, according to the credit report,

² Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

³ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 2 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 11, 2015; Applicant's Answer to the SOR, dated April 19, 2016.

other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶¶ 1.a., 1.c., 1.f., 1.g., 1.j., and 1.k.): It is unclear when Applicant's finances became a problem for him. He was enrolled in college when his family "fell on hard times," not otherwise described, and, when he lost a job, he could no longer afford to go to school, so he withdrew from college in the spring of 2010 to help his mother. Applicant and his mother eventually had a "falling-out," and they haven't spoken for a number of years. Withdrawing from college ended the deferment status of his student loans, and the payment status commenced. The evidence developed regarding Applicant's student loans is confusing, as Applicant has offered inconsistent scenarios regarding his actions. He contended that there were only two student loans, but that somehow over time, they were sold or transferred to other entities, and they eventually increased to six student loans. The alleged unpaid balances and the dates opened for those loans are listed as follows: \$4,097 opened in September 2008 (SOR ¶ 1.a.); \$2,710 opened in September 2008 (SOR ¶ 1.c.); \$1,337 opened in July 2009 (SOR ¶ 1.f.); \$1,335 opened in April 2010 (SOR ¶ 1.g.); \$865 opened in July 2009 (SOR ¶ 1.j.); and \$832 opened in April 2010 (SOR ¶ 1.k.).

In 2012, Applicant learned that his student loans were delinquent when his federal income tax refund was attached by the Internal Revenue Service (IRS). The funds were applied to his student loans. Applicant's actions during the period between 2012 and 2015 are unclear. He initially stated that upon learning of the IRS action, he started making payments to bring the student loans into good standing, and he claimed to have receipts to reflect his actions.⁴ He also stated that between 2012 and his interview with an investigator from the U.S. Office of Personnel Management (OPM), he did not take any action to research the status of his student loans. Applicant claimed that, at the time, he had "a lot going on, and [he] was trying to find a job" because he could not support himself with the jobs he had.⁵ Then he contended that in 2015, he contacted the student loan servicing company and started making payments.⁶ He claimed that he made monthly payments of \$600 to bring the accounts current, and that he had receipts and interest statements to reflect his payments.⁷ Applicant contended that he has reduced the remaining balance from \$13,000 or \$15,000 down to \$11,000.⁸ He acknowledged that he did not fully appreciate or understand his responsibilities with respect to the student loans until the issue appeared on his security clearance paperwork. Applicant attributed his actions or inaction to being young and not thinking it through.⁹

⁴ Tr. at 31-32.

⁵ Tr. at 33.

⁶ Tr. at 34-35

⁷ Tr. at 36-37; Applicant's Answer to the SOR, dated April 19, 2016.

⁸ Tr. at 35-36.

⁹ Tr. at 27-28, 30.

Applicant failed to submit documentation to support his contentions that he had made any contacts with the student loan servicing agents or collection agents, or that he had made any payments directly to any entity with respect to his student loans, including the IRS, servicing agents, or collection agents. He indicated that he had receipts and monthly statements, but he failed to submit them, despite being given an opportunity to supplement the record. He was advised to contact his college student loan adviser, the U.S. Department of Education (DOE), and servicing agents, and to obtain documentation associated with his student loans, but there is no indication that he ever did so. Applicant submitted evidence that a credit repair company, on his behalf, filed numerous disputes with credit reporting agencies in June 2016, seeking the removal of a large number of negative accounts listed in his credit reports.¹⁰ There is no indication of the basis for the dispute. One of those accounts removed was one from the DOE, but the report does not indicate an account number, an alleged unpaid balance, or any other information to determine if that account is one alleged in the SOR. He failed to submit any documentation, such as receipts, cancelled checks, or account statements, to support his contentions that the student loans have been brought back from a default status and that he has been making monthly payments. In the absence of such documentation, there is insufficient evidence to conclude that any of the student loan accounts are in the process of being resolved.

In addition to Applicant's student loan accounts, there are the following medical-related accounts that were placed for collection with unpaid balances: \$432 that Applicant contends he settled (SOR ¶ 1.n.); \$247 that Applicant had scheduled for automatic payment for April 29, 2016 (SOR ¶ 1.r.); \$203 that Applicant contended was paid by worker's compensation in October 2015 (SOR ¶ 1.s.); \$200 that Applicant contended was paid by worker's compensation in October 2015 (SOR ¶ 1.t.); \$149 that Applicant contended was paid by worker's compensation in October 2015 (SOR ¶ 1.u.); \$94 that Applicant contended he paid (SOR ¶ 1.w.); \$65 that Applicant contended he paid (SOR ¶ 1.x.); \$32 that Applicant contended was paid by worker's compensation in October 2015 (SOR ¶ 1.y.); and \$30 that Applicant contended was paid by worker's compensation in October 2015 (SOR ¶ 1.z.).

Applicant claimed that he had suffered an injury while on the job, resulting in surgery, and several of the medical accounts should have been covered by worker's compensation. When he learned during his OPM interview that they had not been resolved, he said he contacted the collection agents. He contended that the accounts associated with his workplace injury were paid. Applicant was advised to contact the human resources office of his employer, the hospital where he was furnished medical treatment, and the worker's compensation insurance carrier to obtain documentation regarding payments. Applicant failed to submit documentation to support his contentions that any of the medical-related accounts have been paid. Applicant's credit repair company, on his behalf, filed numerous disputes with credit reporting agencies in June 2016, seeking the removal of all of the medical-related negative accounts listed in his credit reports.¹¹ There is no indication of the basis for the disputes. Of the 22 accounts

¹⁰ AE A (Credit Report Removals, dated June 20, 2016).

¹¹ AE A, *supra* note 10; Applicant's Answer to the SOR, *supra* note 7.

removed, several appear to be medical-related, but the report does not indicate account numbers, alleged unpaid balances, or any other information to determine if those accounts are the ones alleged in the SOR. In the absence of the requested documentation, there is insufficient evidence to conclude that any of medical-related accounts have been resolved or are in the process of being resolved.

The remaining delinquent accounts were placed for collection or charged off with unpaid balances: a credit union joint installment agreement with Applicant's mother for \$3,379 that was charged off. Applicant contended that he spoke with the loan officer and it was determined that the account was not his account and that it is in good standing (SOR ¶ 1.b.); a credit card with a \$2,000 credit limit and a past-due balance of \$2,215. Applicant denied the account was his, and he reported it as identity theft (attributed to his mother). His credit repair company disputed an account with the same creditor, but the report does not indicate an account number, an alleged unpaid balance, or any other information to determine if that account is the one alleged in the SOR. The disputed account was removed from Applicant's credit report (SOR ¶ 1.d.); a truck loan with a high credit of \$11,730 and an unpaid balance of \$2,084 on a truck that was repossessed. Applicant contended he was working with an account representative to set up a repayment plan. Applicant's credit repair company disputed an account with the same creditor, but the report does not indicate an account number, an alleged unpaid balance, or any other information to determine if that account is the one alleged in the SOR. The disputed account was removed from Applicant's credit report (SOR ¶ 1.e.).

There is an automobile loan cosigned for Applicant's mother with a high credit of \$4,500 and an unpaid balance of \$1,138 that was charged off in 2012. Applicant contended he was working with an account representative to set up a repayment plan (SOR ¶ 1.h.); a bank-issued credit card with a \$500 credit limit and a high credit of \$1,136 that was charged off and sold to a debt purchaser. Applicant contended the account was settled. Applicant's credit repair company disputed an account with the same creditor, but the report does not indicate an account number, an alleged unpaid balance, or any other information to determine if that account is the one alleged in the SOR. The disputed account was removed from Applicant's credit report (SOR ¶ 1.i.); an unspecified type of account with an unpaid balance of \$955 that was sold to a debt purchaser. Applicant denied the account was his, and he reported it as identity theft (attributed to his mother) (SOR ¶ 1.l.); a telephone account with an unpaid balance of \$779. Applicant denied the account was his, and he reported it as identity theft (attributed to his mother) (SOR ¶ 1.m.).

There is an electric power utility account with an unpaid balance of \$417 that Applicant contended had been settled. Applicant's credit repair company disputed two accounts with the same creditor, but the report does not indicate account numbers, alleged unpaid balances, or any other information to determine if either of those accounts is the one alleged in the SOR. The disputed account was removed from Applicant's credit report (SOR ¶ 1.p.); an insurance account with an unpaid balance of \$252. Applicant denied that it was his account. He contended that it was his mother's account, and that it had been written off due to his mother's Chapter 13 bankruptcy (SOR ¶ 1.q.); and an

insurance account with an unpaid balance of \$136 that Applicant had scheduled for automatic payment for April 29, 2016 (SOR ¶ 1.v.).

Applicant was advised to contact his creditors, collection agents, credit reporting agencies, and police authorities to obtain documentation to support his contentions that he had paid certain accounts, settled certain accounts, that other accounts were determined to be not his, that identity theft was responsible for some accounts, that police reports had been filed regarding the alleged identity thefts, and correspondence related to disputes he and his credit repair company filed. He failed to submit any documentation, to support his various contentions related to the accounts alleged in the SOR. In the absence of such documentation, there is insufficient evidence to conclude that any of the accounts have been resolved or are in the process of being resolved.

Applicant failed to submit a requested Personal Financial Statement to reflect his net monthly income normal monthly expenses and debt payments; and a monthly remainder available for discretionary spending or savings. There is no evidence of financial counseling. With approximately \$25,554 in delinquent bills, none of which have conclusively been addressed by Applicant, despite his verbal and written assurances that his financial house is in order, it appears that Applicant's finances are still not under control. After a multi-year period of ignoring his delinquent debts, essentially attributing his inaction to youthful inexperience and some poor choices, Applicant's first order of business was not to contact his creditors, but to dispute his delinquent accounts to have them removed from his credit reports. In the absence of documentation pertaining to Applicant's delinquent accounts, including his student loans, and Applicant's current financial situation, it still remains unclear if Applicant's financial situation has improved, or if his finances are under control.

Personal Conduct

On May 23, 2015, when Applicant completed his e-QIP, he responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record asked if, in the past seven years, he had: any possessions or property voluntarily or involuntarily repossessed or foreclosed; bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or if any debts are or were 120 or more days delinquent. Another question was if he was currently delinquent on any Federal debt. Applicant answered “no” to 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. Applicant subsequently denied intending to falsify his responses. He explained that times were hard, and he did not know anything about student loans showing up on credit report; he was aware that he had student loans and he knew they were delinquent; he was not aware of many of the accounts; that he voluntarily relinquished his vehicle for repossession; he was young; and he thought his debts were on their way to getting fixed.

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.”¹² 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.”¹³

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines 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.”¹⁴ 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.¹⁵

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship

¹² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹⁴ “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).

¹⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.”¹⁶

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.”¹⁷ Thus, nothing in this decision should be construed to suggest that I have based this decision 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability to satisfy debts” is potentially disqualifying. In addition, AG ¶ 19(b) may apply if there is an “unwillingness to satisfy debts regardless of the ability to do

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ See Exec. Or. 10865 § 7.

so.” Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise concerns. It is unclear when Applicant’s history of financial problems commenced, but it appears that it was around the time that he withdrew from college in the spring of 2010. His student loans and many other accounts became delinquent, and he had one vehicle repossessed. The SOR alleged that 26 debts became delinquent. Without documentation to support his claimed resolution efforts, the vast majority of his debts, including those as miniscule as \$30 or \$32 are still unresolved, despite Applicant’s claims that he has his financial house in order. AG ¶¶ 19(a), 19(b), 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.” Evidence that “the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and 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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹⁸ 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 cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

I have concluded that none of the mitigating conditions apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since about 2010 make it difficult to conclude that it occurred “so long ago” or “was so infrequent,” or that it is “unlikely to recur.” He attributed losing a job, without describing which job, or how it negatively impacted him, withdrawing from school, his family falling on hard times, without otherwise describing the hard times, and identity theft supposedly perpetrated by his

¹⁸ 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)).

mother, as the reasons for his financial issues. In the absence of more details, it is difficult to determine if any of those factors were largely beyond Applicant's control. There is no evidence of financial counseling. Aside from Applicant's verbal and written comments, there is no documentary evidence to support his claimed good-faith efforts to address his debts. Applicant was given guidance during the hearing as to the nature of recommended documentation, and he simply ignored that guidance. Applicant's only proven action was to engage the support of a credit repair company to dispute nearly all of the accounts appearing in Applicant's credit report. None of the disputes sets forth a reasonable basis to dispute the legitimacy of the past-due debts, and there is no documented proof to substantiate the basis of the disputes. That position indicates the absence of any priority to timely address his aging debts. There is also an inference that he is simply waiting for the debts to drop off his credit reports.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant needs only to 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 are no references to a plan other than to remove the debts from Applicant's credit reports, and there are lengthy periods of inactivity.

There is little evidence to reflect that Applicant's financial problems are yet under control. Under the circumstances, Applicant has not acted responsibly by failing to address nearly all of his delinquent accounts and by failing to initiate meaningful efforts to work with his older creditors.¹⁹ He failed to submit documentation to support his purported efforts regarding all of his debts. Applicant's actions, or relative inaction, under the circumstances casts substantial doubt on his current reliability, trustworthiness, and good judgment.²⁰

Guideline E, Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

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).

about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

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

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, on May 23, 2015, when Applicant completed his e-QIP, he responded to certain questions pertaining to his financial record. The questions in Section 26 – Financial Record asked if, in the past seven years, he had: any possessions or property voluntarily or involuntarily repossessed or foreclosed; bills or debts turned over to a collection agency; any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or if any debts are or were 120 or more days delinquent. Another question was if he was currently delinquent on any Federal debt. Applicant answered “no” to 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.

Applicant's comments provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely an omission that was the result of oversight or misunderstanding of the true facts on his part. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the falsification or omission occurred. As an administrative judge, I must consider the record evidence as a whole to determine whether there is a direct or circumstantial evidence concerning Applicant's intent or state of mind at the time the alleged falsification or omission occurred. I have considered the entire record, including Applicant's initial and

subsequent comments.²¹ Applicant's explanations for his submissions, in my view, were that he essentially danced around the questions during his hearing. On the one hand he would have me believe that he is mature enough to hold a security clearance, and on the other hand, he would have me believe that he is ignorant and naive regarding his finances. Those inconsistent explanations stretch credulity. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

²¹ The Appeal Board has cogently explained the process for analyzing falsification cases, stating:

- (a) when a falsification allegation is controverted, Department Counsel has the burden of proving falsification; (b) proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred; and (c) a Judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning the applicant's intent or state of mind at the time the omission occurred. [Moreover], it was legally permissible for the Judge to conclude Department Counsel had established a prima facie case under Guideline E and the burden of persuasion had shifted to the applicant to present evidence to explain the omission.

ISCR Case No. 03-10380 at 5 (App. Bd. Jan. 6, 2006) (citing ISCR Case No. 02-23133 (App. Bd. June 9, 2004)). See also ISCR Case No. 08-05637 at 3 (App. Bd. Sept. 9, 2010) (noting an applicant's level of education and other experiences are part of entirety-of-the-record evaluation as to whether a failure to disclose past-due debts on a security clearance application was deliberate).

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

I have concluded that none of the mitigating conditions apply. Applicant's falsifications regarding his finances in his May 2015 e-QIP by intentionally failing to disclose the true extent of his financial difficulties is recent, serious, and not mitigated. A key component of the protection of classified information is reliance on security clearance holders to accurately report potential compromise of classified information. A person who has so many delinquent accounts, and who denies having them on their e-QIP cannot be relied upon to report potential compromise of classified information. Applicant's actions, or relative inaction, under the circumstances casts substantial doubt on his current reliability, trustworthiness, and good judgment.

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 SEAD 4, App. A, ¶ 2(d):

(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 SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant 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.²²

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.

²² 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).

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant has an extensive history of financial problems that commenced in about 2010. Numerous accounts, including student loans, became delinquent. His debts were placed for collection or charged off. A vehicle was repossessed. When asked about his finances while completing his e-QIP, Applicant falsified and concealed the truth about his finances. Although he was offered the opportunity to submit documentation pertaining to his debts, as well as his purported efforts to resolve them, he failed to do so. In the absence of a Personal Financial Statement, the true state of his finances is not known.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:²³

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, seemingly avoiding resolution of most of the long-standing debts in his name. His intentional falsifications regarding his finances are troubling. Overall, the evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations and personal conduct. See SEAD 4, App. A, ¶ 2(d)(1) through AG ¶ 2(d)(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:

AGAINST APPLICANT

²³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraphs 1.a. through 1.z.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a. and 2.b.: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge