



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-07113

Appearances

For Government: Allison Marie, Esquire, Department Counsel

For Applicant: Ronald C. Sykstus, Esquire

02/20/2018

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On January 14, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On June 22, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under 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) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.¹ The SOR alleged

¹ 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

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 when Applicant received the SOR as there is no receipt in the case file. On August 5, 2016, he responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. On October 10, 2016 (by telephone message) and on October 14, 2016 (by letter), Applicant changed his mind and requested a hearing before an administrative judge. It is unclear when Department Counsel indicated the Government was prepared to proceed. The case was assigned to me on March 22, 2017. A Notice of Hearing was issued on May 4, 2017. I convened the hearing as scheduled on June 23, 2017.

During the hearing, Government exhibits (GE) 1 through GE 5, and Applicant exhibits (AE) A through AE LL were admitted into evidence without objection. Applicant and four witnesses testified. The transcript (Tr.) was received on July 6, 2017. I kept the record open to enable Applicant to supplement it. He took advantage of that opportunity and timely submitted several documents, which were marked and admitted as AE MM through AE OO, without objection. The record closed on August 4, 2017.

Findings of Fact

In his Answer to the SOR, Applicant denied, with comments, all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.c.) in the SOR. Applicant's 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 57-year-old employee of a defense contractor. He has been a product support specialist engineer with the company or its predecessors for nearly 32 years. He is a 1979 high school graduate, with a 1985 bachelor of science degree in mechanical engineering, and a 1992 certification in environmental engineering. He has never served in the U.S. military. Applicant was initially granted a secret security clearance in 1985, and it was renewed in 2003. He was married in 1985, and divorced in 1991. He remarried in 1992, and divorced in 2000. He married again in 2006. He has two foster sons, born in 1995 and 1998.

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.

Financial Considerations²

Applicant was a real estate investor. A review of his 2004 and 2016 credit reports reveals that as far back as 1995 he started acquiring real estate by financing his purchases with mortgages and second mortgages. In approximately 2005, after attending a real estate seminar, he started a limited liability partnership (LLP) as a vehicle to purchase real estate for either resale or a lease option to purchase. While he was a partner with mostly family members or close family friends, he was not an employee of the LLP. He, alone, was responsible for all LLP debts. There were six properties associated with the LLP until 2008-2009, when there were nine properties. The LLP was dissolved in approximately 2009.

The national financial crisis of 2006-2008 created difficulties for Applicant. In 2007, the real estate market started declining. Lending dried up and buyers under the lease option were unable to obtain financing to complete contracted purchases. Because of the loss of his income and revenues generated by his real estate investments, he characterized the situation as everything imploding, Applicant followed the guidance set forth in what he called a nationally syndicated business and lifestyle magazine, as well as a bankruptcy attorney, not to file for bankruptcy, but rather to “move and shake” by negotiating settlements with the various financial institutions. As a result, his delinquent lines of credit and credit cards were settled either with immediate full payments or with increased monthly installments within a six month period in about July 2009.³ He managed to sell three of his properties, through a short-sale process; four accounts were charged off; and four went into foreclosure because proposed short-sales were rejected by the mortgage lenders.⁴ He also received a couple of Internal Revenue (IRS) Form 1099-C, *Cancellation of Debt*. Applicant described the result of his inability to resolve the status of the remaining properties:⁵

As a result of the aforementioned financial market’s decline, the revenue and resources to maintain the portfolio decreased to unsustainable levels within nine months. . . . A large portion of debt was negotiated and repaid, however, in some instances, proposed offers to repay were summarily rejected leaving no recourse but to devote available resources to parties willing to agree to workable terms.

² General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (e-QIP, dated January 14, 2015); GE 2 (Personal Subject Interview, dated February 5, 2015); GE 3 (Combined TransUnion and Equifax Credit Report, dated September 29, 2004); GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated January 24, 2015); AE G (Combined Experian, TransUnion, and Equifax Credit Report, dated September 19, 2016); and Applicant’s Answer to the SOR, dated August 5, 2016.

³ GE 1, *supra* note 2, at 34-35.

⁴ GE 1, *supra* note 2, at 34; AE MM (e-mail and foreclosure date attachment, dated July 24, 2017).

⁵ Applicant’s Answer to the SOR, *supra* note 2, at 3.

By early 2015, Applicant's portfolio consisted of only one remaining property.⁶ The SOR identified two mortgage accounts and a home-equity line of credit associated with two properties that had been placed for collection and either charged off or in a foreclosure status, as reflected by Applicant's January 2015 credit report. Those debts total approximately \$578,628. The current status of those accounts, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, is as follows.

(SOR ¶ 1.a.): This is a second mortgage on a property purchased in 2005 with an unpaid balance of \$68,983, of which \$26,335 was past due. Applicant unsuccessfully attempted a short-sale on the property. The unpaid balance was charged off in 2015.⁷ The creditor issued Applicant an IRS Form 1099-C, in the amount of \$68,538, and that Form and the amount, along with an IRS Form 982, *Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Adjustment)*, were included in Applicant's federal income tax return for the tax year 2015.⁸ The account has been resolved.

(SOR ¶¶ 1.b. and 1.c.): These are a purchase-money home-equity line of credit (second mortgage) and a first mortgage on a property purchased in 2005 (by quitclaim deed) for \$408,700, as his primary residence, with respective unpaid balances of \$102,574 (second mortgage that was charged off) and \$416,516 (first mortgage in a foreclosure status, of which \$15,135 was past due).⁹ At some point, Applicant started receiving account statements from an entity other than the mortgage lender – a servicing company – but because there was no indication that the entity was associated with the mortgage lender, the statements were discarded. It appeared to Applicant that the chain of title to the property had been broken. In May 2012, Applicant filed in the state court for a Quiet Title on the property.¹⁰ Judgment for Quiet Title was entered against the original mortgage lender in December 2012 when it failed to appear and defend the action.¹¹ In this instance, the original mortgage lender had lost its right to do business in the state in 2011. Although the property had renters, paying him a monthly rental of \$1,500,¹² Applicant stopped making his \$2,523 monthly payments on the first mortgage in December 2012, and his \$623 monthly payments on the second mortgage in June 2013.¹³ He did not place any funds in an escrow account.¹⁴ Applicant informed the servicing

⁶ Tr. at 54.

⁷ GE 4, *supra* note 2, at 10; AE G, *supra* note 2, at 35-36.

⁸ AE A (Letter, dated June 8, 2017); AE A (Form 982, undated); Tr. at 38.

⁹ GE 4, *supra* note 2, at 7-8; AE G, *supra* note 2, at 29-34.

¹⁰ A Quiet Title action is a legal action that seeks to "quiet title" to property where adverse claims are made against the property. For example, where a lender wrongfully forecloses on a property and claims the property as their own, but the borrower challenges the foreclosure.

¹¹ AE B (Judgment For Quiet Title, dated December 11, 2012); AE LL (Letter, dated June 19, 2017).

¹² Tr. at 43.

¹³ AE G, *supra* note 2, at 31, 34; Tr. at 78-79.

¹⁴ Tr. at 81.

company on several occasions that he was not going to pay them, but he received no responses. Applicant first learned that the second mortgage had been charged off when he was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in early 2015.¹⁵ He filed disputes with the credit reporting agencies.¹⁶ As of the date of the hearing, the creditor had not issued Applicant an IRS Form 1099-C.¹⁷

In May 2015, after the state statute of limitations had already expired,¹⁸ a number of banks and other financial institutions (but not the original mortgage lender) filed suit in federal district court against Applicant seeking declaratory judgments to set aside and void the Quiet Title Judgment for violating the mandatory requirements of the state's quiet title statutes and for violating the due process rights of one of the plaintiffs as it pertained to notice.¹⁹ Although the matter is complicated, one of the essential issues distilled to a succinct form is whether or not legal or equitable title to property has to be officially filed under state law, and whether it can be expunged without notice to such an unregistered or unfiled entity. Another essential issue is whether a company can utilize an electronic registration system with the intent to circumvent state law by offering an off-the-record transfer of interest in mortgage debt and security instruments in order to save clients the costs of recording transfers of beneficial interest in security instruments.²⁰ Applicant filed a Motion for Summary Judgment in July 2015 in federal district court. In September 2015, Applicant's motion was granted.²¹

In November 2016, the plaintiffs filed a Motion for Partial Summary Judgment in federal district court. Based solely on the written record, and without oral argument, the federal district court issued a Judgment in which the state court Judgment for Quiet Title was declared null and void.²² In June 2017, the federal district court granted the plaintiffs \$144,620.19 in "reasonable" attorney's fees. In January 2017, Applicant filed an appeal in the federal court of appeals, and appellate briefs were to be filed by July 26, 2017.²³ The time schedule was extended by stipulation until August 25, 2017.²⁴ There is no more current information in evidence. In the event that he ultimately loses his litigation, Applicant is prepared to withdraw funds from his retirement accounts to resolve the

¹⁵ Tr. at 59-60.

¹⁶ AE G, *supra* note 2, at 32, 34.

¹⁷ Tr. at 40, 55.

¹⁸ Tr. at 61.

¹⁹ AE C (Complaint, dated June 26, 2015).

²⁰ AE LL, *supra* note 11.

²¹ AE D (Order Granting Defendant's Motion to Dismiss, dated September 11, 2015).

²² AE E (Judgment, dated December 14, 2016).

²³ AE F (Appellate Documents, various dates).

²⁴ AE NN (Stipulation, dated July 26, 2017).

issues.²⁵ During the period of the on-going litigation, the account is in the process of being resolved.

Applicant's annual salary in 2016 was \$142,000, and his wife's self-employment income was \$50,000.²⁶ In August 2017, Applicant prepared a Personal Financial Statement to reflect his net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. His net monthly income from all sources (including his business income) was \$13,314.60; his monthly expenses (including attorney fees and church tithe totaling \$2,635.08) were \$9,263.33; and debt payments to various creditors were \$3,786.21; leaving \$264.56 available for discretionary spending or savings.²⁷ Applicant estimated that he has approximately \$400,000 in retirement assets, aside from his \$6,000 401(k) account.²⁸ Other than the delinquent debts listed in the SOR, Applicant has no other delinquent accounts.²⁹

Character References and Work Performance

Applicant's Director of Maintainability and Product Support supervises about 50 employees, including Applicant. He characterized Applicant as very reliable, technically sound, and dedicated.³⁰ The Senior Manager of Systems Engineering was in the supervisory chain from 2000 to 2013, while Applicant worked at another location. He referred to Applicant as one of the company's top engineers whose work was outstanding. The customers respected Applicant's technical knowledge and his discipline, and they assigned employees to be mentored by Applicant. He has absolutely no concerns about Applicant having access to classified information.³¹ Applicant's former pastor, now retired, at a church with up to 1,000 parishioners, has known Applicant as a deacon of the church. Applicant had an excellent reputation among the parishioners.³²

The performance review systems with Applicant's employer have changed over the years, but they generally reflect an individual who either successfully achieves expectations or exceeds expectations (under the most recent system), or are at target or above target, or even an expert (under earlier systems).³³ Applicant has received a

²⁵ Tr. at 69.

²⁶ Tr. at 48, 51.

²⁷ AE OO (Personal Financial Statement, undated).

²⁸ Tr. at 66-67.

²⁹ Tr. at 65.

³⁰ Tr. at 95-99.

³¹ Tr. at 100-103.

³² Tr. at 104-108.

³³ AE H (2016 Performance Review, undated); AE I (2015 Performance Review, undated); AE J (2014 Performance Review, undated); AE K (2013 Performance Review, undated); AE L (2012 Performance Review, undated); AE M (2011 Performance Review, undated); AE N (2010 Performance Review, undated); AE O (2009 Performance Review, undated); AE P (2008 Performance Review, undated).

number of certificates of appreciation, merit awards, appreciation awards, certificates of recognition, and a letter of appreciation.

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.”³⁴ 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.”³⁵

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.”³⁶ 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.³⁷

³⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

³⁶ “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).

³⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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."³⁸

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."³⁹ 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 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.

³⁸ *Egan*, 484 U.S. at 531.

³⁹ See Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns under AG 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant was a real estate investor. At one point, his lines of credit and credit cards became delinquent, various accounts were charged off, and properties went into foreclosure.⁴⁰ The SOR focused on two mortgage accounts and a home-equity line of credit associated with two properties that were placed for collection and either charged off or in a foreclosure status, totaling approximately \$578,628. Applicant stopped making his payments on the first mortgage in December 2012, and on the second mortgage in June 2013, although he apparently had the financial ability to do so. AG ¶¶ 19(a), 19(b), and 19(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (a) 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;⁴¹
- (b) 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;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit

⁴⁰ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The issues associated with Applicant's credit cards, other accounts, and the mortgages not alleged in the SOR will be considered only for the five purposes listed above.

⁴¹ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;⁴² and

(e) 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 AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply. As noted above, in 2007, with the real estate market declining, lending dried up, and buyers under the lease option were unable to obtain financing to complete contracted purchases. The conditions devastating the real estate market – a substantial and unprecedented business downturn – were clearly largely beyond Applicant’s control. Applicant lost income and revenues generated by his real estate investments. Applicant chose not to file for bankruptcy, but rather to negotiate settlements with the various financial institutions. Through his good-faith efforts, a large portion of debt was negotiated and repaid, however, in some instances, proposed offers to repay were summarily rejected leaving no recourse but to devote available resources to parties willing to agree to workable terms. His delinquent lines of credit and credit cards were settled either with immediate full payments or with increased monthly installments within a six-month period in about July 2009. He managed to sell several properties through a short-sale process, but some accounts were charged off, and some mortgages went into foreclosure because proposed short-sales were rejected by the mortgage lenders. He also received a couple of IRS Form 1099-Cs. By early 2015, Applicant’s portfolio consisted of only one remaining property, the one alleged in the SOR, the status of which he has disputed. The status of that property is unclear as litigation has taken place with the state court agreeing with Applicant, and the federal district court essentially reversing the state court. The matter is currently on appeal with the federal court of appeals.

Applicant received financial guidance from a nationally syndicated business and lifestyle magazine, as well as from a bankruptcy attorney, Applicant followed through on the guidance to renegotiate his accounts and avoid bankruptcy. One troubling aspect of

⁴² 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)).

Applicant's actions is his acknowledgment that while he was receiving rent on the property, he was not making deposits into an escrow account pending a final determination regarding the status of the one remaining property. Nevertheless, should he lose the litigation, Applicant fully expects to be able to cover all expenses by withdrawing funds from his retirement accounts.⁴³

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 every debt or issue 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 issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

Under the circumstances, Applicant has acted responsibly by addressing his delinquent accounts and by initiating meaningful timely efforts to work with his creditors or collection agents.⁴⁴ Applicant's actions over the lengthy period, under the circumstances, no longer cast doubt on his current reliability, trustworthiness, and good judgment.⁴⁵

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;

⁴³ It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

⁴⁴ "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.

⁴⁵ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(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.⁴⁶

There is some evidence against mitigating Applicant's conduct. The SOR focused on two mortgage accounts and a home-equity line of credit associated with two properties that were placed for collection and either charged off or in a foreclosure status, totaling approximately \$578,628. Applicant stopped making his payments on the first mortgage in December 2012, and on the second mortgage in June 2013, although he apparently had the financial ability to continue making payments. Also, while he was receiving rent on the property, he was not making deposits into an escrow account pending a final determination regarding the status of the one remaining property.

The mitigating evidence under the whole-person concept is more substantial. Applicant's financial problems arose from a substantial and unprecedented business downturn in 2007 with the national economy collapsed and the real estate market declined. Applicant lost income and revenues generated by his real estate investments. He chose not to file for bankruptcy, but rather to negotiate settlements with the various financial institutions. Through his good-faith efforts, a large portion of debt was negotiated and repaid. His delinquent lines of credit and credit cards were settled either with immediate full payments or with increased monthly installments within a six month period in about July 2009. He managed to sell several properties through a short-sale process, but some accounts were charged off, and some mortgages went into foreclosure because proposed short-sales were rejected by the mortgage lenders. He also received a couple of IRS Form 1099-Cs. By early 2015, Applicant's portfolio consisted of only one remaining property, the one alleged in the SOR. The status of that property is unclear as litigation has taken place with the state court agreeing with Applicant, and the federal district court reversing the state court. The matter is currently on appeal with the federal court of appeals.

In 2017, Applicant's net monthly income from all sources (including his business income) was \$13,314.60. He had \$264.56 available each month for discretionary spending or savings. Applicant estimated that he has approximately \$400,000 in retirement assets, aside from his \$6,000 401(k) account. Other than the delinquent debts listed in the SOR, Applicant has no other delinquent accounts. With the possible exception of the one property currently in litigation, Applicant's finances appear to be good.

⁴⁶ 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 Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁴⁷

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 excellent track record of debt reduction and elimination efforts, resolving most of his debts. Overall, the evidence leaves me without questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations. 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 Directive ¶ E3.1.25, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.c:	For Applicant

⁴⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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