



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03221

Appearances

For Government: David F. Hayes, Esquire, Department Counsel

For Applicant: *Pro se*

03/05/2018

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 March 27, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On February 8, 2017, 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

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 February 17, 2017. On February 18, 2017, he responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on March 17, 2017. The case was assigned to me on May 26, 2017. A Notice of Hearing was issued on August 3, 2017. I convened the hearing as scheduled on August 22, 2017.

During the hearing, Government exhibits (GE) 1 through GE 9, and Applicant exhibits (AE) A through AE E were admitted into evidence without objection. Applicant and one witness testified. The transcript (Tr.) was received on August 30, 2017. I kept the record open to enable Applicant to supplement it. He failed to take advantage of that opportunity. The record closed on October 13, 2017.

Rulings on Procedure

At the commencement of the hearing, Department Counsel moved to amend several sections of the SOR to conform to the expected evidence. He moved to withdraw SOR ¶¶ 1.g. (Applicant was merely an authorized user, not the responsible party); 1.n. (account was already resolved); and 1.o. (account was already paid); and he moved to amend SOR ¶¶ 1.j. (substitute the name of a state for the Federal Government); and 2.a. (delete a cross-reference). There being no objections to the motions, the motions were granted.²

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.q.), as well as both of the factual allegations pertaining to personal conduct (¶¶ 2.a. and 2.b.), 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 60-year-old employee of a defense contractor. He has been a vice president with the company since March 2015. He was previously the founder and

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 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 an effect on Applicant in this case.

² Tr. at 12-14.

president of a family-held corporation from January 1983 until March 2015, when the two companies merged.³ He is a 1976 high school graduate, with an associate of arts degree, and a 1987 master of business administration. It is unclear if he ever received a bachelor's degree. Applicant has never served in the U.S. military. He was granted a top secret security clearance in 1991, and he has maintained that clearance through periodic reviews. Applicant was married in June 1976, and divorced in February 1980. He married again in September 1983, and divorced in January 1996. He remarried in June 2006. He has two biological children, born in 1989 and 1993, as well as a stepchild, born in 1989.

Financial Considerations⁴

Applicant has a lengthy history of involvement in business. He was the chairman of the board of a corporation that was the parent company of the corporation for which he was the president, co-located at the same address, until the parent company closed in August 2014 when the building was placed into a foreclosure status. At that point, Applicant relocated his remaining corporate entity to his residence. Applicant's wife and mother were active in one or both corporations as directors or officers.⁵

It is unclear when Applicant first started experiencing financial problems. A review of his 2015 credit report reveals a state tax lien filed in January 2015 and several delinquent accounts for which payments ceased in 2014. His 2016 credit report listed additional past-due accounts. His 2017 credit report added a judgment to the past-due accounts. When interviewed by an investigator with the U.S. Office of Personnel Management (OPM) in May 2015, Applicant claimed either to be unaware of the delinquent accounts or he claimed they were either company accounts, accounts used for corporate expenses, or his wife's personal accounts, and he denied personal responsibility for those accounts. He disputed many of the accounts with Equifax, but he failed to indicate the basis for the disputes. In his Answer to the SOR, Applicant maintained his earlier positions.

The SOR, as amended, identified 14 purportedly delinquent accounts that had been placed for collection or charged off, or filed as a tax lien or judgment, as generally reflected by Applicant's 2015 credit report, his 2016 credit report, or his 2017 credit report. Those debts total approximately \$1,709,759. 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.

³ GE 1 (e-QIP, dated March 27, 2015), at 10.

⁴ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1, *supra* note 3; GE 2 (Personal Subject Interview, dated May 18, 2015); GE 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 15, 2015); GE 4 (Equifax Credit Report, dated September 13, 2016); GE 5 (Equifax Credit Report, dated March 17, 2017); AE E (Equifax Credit Dispute Report, dated July 4, 2017); and Applicant's Answer to the SOR, dated February 18, 2017.

⁵ See Annual Corporate Reports at the state web site.

(SOR ¶ 1.a.): This is a joint conventional home mortgage with a high credit of \$763,900 and unpaid balance of \$537,793, of which \$97,133 was past due. The foreclosure process started.⁶ Applicant claimed the creditor's mortgage statements were inaccurate and his attempts to reconcile the statements had failed. In the summer of 2015, he stopped making his monthly payments to the creditor, and he did not place the funds into an escrow account.⁷ The creditor filed for foreclosure, and Applicant filed a Motion to Dismiss in October 2016.⁸ A Notice of Hearing was scheduled for January 31, 2017, and as of March 2017, the property was in a pre-foreclosure status.⁹ Applicant's wife disputed the account with Equifax, and in July 2017, the information was updated to reflect an unpaid balance of \$549,126, of which \$115,657 was past due.¹⁰ Eight months after the scheduled court hearing, there is no further progress indicated. In the absence of more recent documentation, I conclude that the account remains unresolved.

(SOR ¶ 1.b.): This is a joint home equity line of credit on Applicant's residence with a \$410,000 credit limit and unpaid balance of \$431,009, of which \$68,500 was past due.¹¹ Applicant claimed that when the foreclosure process commenced, the account was "accelerated," and instead of the normal payments, he was expected to make much larger payments. Applicant never read the line of credit agreement to determine if the acceleration was appropriate.¹² Applicant made his last payment in August 2015.¹³ Applicant's wife disputed the account with Equifax, and in July 2017, the information was updated to reflect an unpaid balance of \$434,929, of which \$80,396 was past due.¹⁴ The account remains unresolved.

(SOR ¶ 1.c.): This is an individual bank credit card account with a \$16,250 credit limit and an unpaid and past-due balance of \$88,562 that was charged off.¹⁵ Applicant claimed that he was unaware of the account and contended that it was a corporate account for which he was not personally responsible. He failed to support his position with any documentation related to the type of the account (individual or corporate), history of

⁶ GE 3, *supra* note 4, at 15; GE 4, *supra* note 4, at 1; GE 5, *supra* note 4, at 4.

⁷ Tr. at 49.

⁸ AE A (Motion to Dismiss, dated October 11, 2016).

⁹ GE 8 (County Clerk's Detailed Case Information, downloaded March 16, 2017); GE 7 (Real Property Pre-Foreclosure Record, dated March 17, 2017).

¹⁰ AE E, *supra* note 4, at 13-14.

¹¹ GE 3, *supra* note 4, at 15; GE 4, *supra* note 4, at 1; GE 5, *supra* note 4, at 4.

¹² Tr. at 52-53.

¹³ GE 3, *supra* note 4, at 15.

¹⁴ AE E, *supra* note 4, at 14-15.

¹⁵ GE 3, *supra* note 4, at 11; GE 4, *supra* note 4, at 2; GE 5, *supra* note 4, at 3; AE E, *supra* note 4, at 3-5.

payments (personal or corporate), or any letters to or from the creditor. Applicant made his last payment in April 2015,¹⁶ and he offered no explanation as to why the payments stopped. Applicant's wife disputed the account with Equifax, and in July 2017, the information was determined to have been reported correctly.¹⁷ The account remains unresolved.

(SOR ¶ 1.d.): This is an individual bank credit card account with a \$17,000 credit limit and an unpaid and past-due balance of \$42,284 that was charged off.¹⁸ Applicant claimed that he was unaware of the account and contended that it was a corporate account for which he was not personally responsible. He failed to support his position with any documentation related to the type of the account (individual or corporate), history of payments (personal or corporate), or any letters to or from the creditor. It is unclear when Applicant made his last payment, and he offered no explanation as to why the payments stopped. The account remains unresolved.

(SOR ¶ 1.e.): This is an individual bank credit card account with a \$20,000 credit limit and an unpaid and past-due balance of \$28,980 that was charged off.¹⁹ Applicant claimed that he was unaware of the account and contended that it was a corporate account for which he was not personally responsible. He failed to support his position with any documentation related to the type of the account (individual or corporate), history of payments (personal or corporate), or any letters to or from the creditor. It is unclear when Applicant made his last payment, and he offered no explanation as to why the payments stopped. Applicant's wife disputed the account with Equifax, and in July 2017, the information was updated to reflect that the account was now "a paid charge off."²⁰ No explanation was offered to indicate who paid the account, when it was paid, or why this particular account was paid. Nevertheless, the account has been resolved.

(SOR ¶¶ 1.f. and 1.q.): This is actually two snapshots in time of an individual department store charge card issued by a bank with a \$14,900 credit limit and an unpaid and past-due balance of \$17,108 that was charged off, and sold to a debt purchaser.²¹ Applicant claimed that he was unaware of the account because he never had a charge account with that department store, and, in the alternative, he contended that it was a corporate account that his wife's assistant used for the benefit of customers for which he was not personally responsible.²² He failed to support his position with any documentation

¹⁶ AE E, *supra* note 4, at 3.

¹⁷ AE E, *supra* note 4, at 3.

¹⁸ GE 3, *supra* note 4, at 11; GE 4, *supra* note 4, at 2; GE 5, *supra* note 4, at 3; AE E, *supra* note 4, at 3-5.

¹⁹ GE 3, *supra* note 4, at 10; GE 4, *supra* note 4, at 2; GE 5, *supra* note 4, at 4.

²⁰ AE E, *supra* note 4, at 16.

²¹ GE 3, *supra* note 4, at 10; GE 4, *supra* note 4, at 2; GE 5, *supra* note 4, at 3; AE E, *supra* note 4, at 11-13. In February 2015, before the account was sold, the past-due balance was \$2,290.

²² Tr. at 82.

related to the type of the account (individual or corporate), history of payments (personal or corporate), or any letters to or from the creditor. It is unclear when Applicant made his last payment, although the account was already 60 days past due in March 2015,²³ and he offered no explanation as to why the payments stopped. Applicant's wife disputed the account with Equifax, and in July 2017, the information was determined to have been reported correctly.²⁴ The account remains unresolved.

(SOR ¶¶ 1.g., 1.n., and 1.o.): These accounts have been withdrawn from the SOR.

(SOR ¶ 1.h.): This is an individual credit card account with a \$6,000 credit limit and an unpaid and past-due balance of \$6,926 that was charged off.²⁵ Applicant claimed that he was unaware of the account and contended that it was a corporate account for which he was not personally responsible. He failed to support his position with any documentation related to the type of the account (individual or corporate), history of payments (personal or corporate), or any letters to or from the creditor. It is unclear when Applicant made his last payment, although the account was already 90 days past due in March 2015,²⁶ and he offered no explanation as to why the payments stopped. It is unclear when Applicant made his last payment, and he offered no explanation as to why the payments stopped. Applicant's wife disputed the account,²⁷ before April 2015, but the account remained unchanged on both his 2015 and 2016 credit reports as having been disputed. The account remains unresolved.

(SOR ¶ 1.i.): This is an individual department store charge account with a \$300 credit limit and an unpaid and past-due balance of \$274 that was charged off.²⁸ Applicant claimed that he was unaware that the account had been charged off, and he made no comments as to the nature of the account (personal versus corporate). Applicant made his last payment in November 2014,²⁹ and he offered no explanation as to why the payments stopped. Applicant's wife disputed the account with Equifax, and in July 2017, the information was determined to have been reported correctly.³⁰ The account remains unresolved.

²³ GE 3, *supra* note 4, at 10.

²⁴ AE E, *supra* note 4, at 11-13.

²⁵ GE 3, *supra* note 4, at 8; GE 4, *supra* note 4, at 2.

²⁶ GE 3, *supra* note 4, at 8.

²⁷ Although Applicant said in his Answer to the SOR that the dispute was filed with Experian, during the hearing, he stated "for the record," every time he referred to Experian, he meant to say Equifax. Tr. at 72.

²⁸ GE 3, *supra* note 4, at 14; GE 4, *supra* note 4, at 2; GE 5, *supra* note 4, at 4; AE E, *supra* note 4, at 5.

²⁹ GE 5, *supra* note 4, at 4.

³⁰ AE E, *supra* note 4, at 5-8.

(SOR ¶ 1.j.): This is a state tax lien in the amount of \$6,356 that was filed against Applicant on January 16, 2015.³¹ Because the original SOR allegation referred to a federal tax lien, Applicant initially focused on that allegation.³² When a Department Counsel furnished him a copy of the lien at the time the SOR was issued, Applicant did not look at it. During the hearing, he challenged the right of the state to “go after an owner or corporate officer for something that the company doesn’t pay.”³³ While he was unaware of any state tax lien, he promised to follow up on the allegation with his wife and the state. Applicant failed to subsequently submit any documents to reflect any efforts by his wife or himself to contact the state or resolve the lien. The lien remains unresolved.

(SOR ¶ 1.k.): This is a judgment in the amount of \$999,000 that was filed against Applicant and his wife, as individuals, as well as two of his corporations, and other defendants, in January 2016, and later amended to \$1,348,334.99 in January 2016.³⁴ The action was brought because the defendants failed to comply with their obligations under the series of loan agreements because the corporation had folded, causing the loans to go into default.³⁵ In November 2015, Applicant and his wife, as individuals, filed their own counter-lawsuit against the lender. In April 2016, all parties agreed to settle the litigation. The foreclosure sale on Applicant’s former corporate headquarters building was to continue, and Applicant and his wife agreed to pay the lender \$7,500.³⁶ The judgment has been resolved.

(SOR ¶ 1.l.): This is an individual bank credit card account with a \$11,500 credit limit and an unpaid balance of \$11,218, of which \$1,394 was past due.³⁷ Applicant claimed that he was unaware of the account and contended that it was a corporate account for which he was not personally responsible. He failed to support his position with any documentation related to the type of the account (individual or corporate), history of payments (personal or corporate), or any letters to or from the creditor. It is unclear when Applicant made his last payment, although the account was already 150 days past due in

³¹ GE 6 (Lien Filing Record, dated January 16, 2015); GE 3, *supra* note 4, at 5-6; GE 4, *supra* note 4, at 4; GE 5, *supra* note 4, at 2.

³² Applicant’s Answer to the SOR, *supra* note 4, at 3.

³³ Tr. at 73-75.

³⁴ GE 4, *supra* note 4, at 4; GE 5, *supra* note 4, at 1; AE D (Satisfaction of Amended Final Judgment, dated April 26, 2016).

³⁵ AE D, *supra* note 34. Applicant’s description of the issue appearing in his e-QIP is misleading. He claimed the lender brought the action against the corporation for not timely providing a financial statement; because the lender pulled out of the market; and because it failed to comply with a forbearance agreement awaiting sale of an asset. He indicated the issue would be resolved by June 2015. See GE 1, *supra* note 4, at 38.

³⁶ GE 3, *supra* note 4, at 9.

³⁷ GE 3, *supra* note 4, at 14; GE 4, *supra* note 4, at 2; GE 5, *supra* note 4, at 4; AE E, *supra* note 4, at 5.

April 2015,³⁸ and he offered no explanation as to why the payments stopped. Applicant's wife disputed the account before April 2015,³⁹ but there is no indication as to any further action. The account remains unresolved.

(SOR ¶ 1.m.): This is a medical account with an unpaid balance of \$430.⁴⁰ Applicant claimed that he was unaware of the account. Applicant's wife disputed the account before April 2015,⁴¹ but there is no indication as to any further action. The account remains unresolved.

(SOR ¶ 1.p.): This is an unspecified type of account with an unpaid balance of \$387,645.⁴² Applicant contended that it was a corporate account for which he was not personally responsible, although the matter was in litigation since 2014.⁴³ He failed to support his position with any documentation related to the type of the account (individual or corporate), history of payments (personal or corporate), or any letters to or from the creditor. Applicant contends that his wife disputed the account, but there is no evidence of the dispute and there is no indication as to any further action. In February 2017, the plaintiff filed an amended complaint. In the one year since that time, there is no further progress indicated. In the absence of more recent documentation, I conclude that the account remains unresolved.

Applicant did not submit a Personal Financial Statement to reflect his net monthly salary; monthly expenses, including debt payments; or if there is a monthly remainder available for discretionary saving or spending. The only evidence of his current annual income is his oral statement that his annual salary is \$200,000.⁴⁴ In the absence of such information, it remains unclear if Applicant's financial situation has improved, or if his finances are under control, especially in light of his significant number of continuing delinquent debts. Furthermore, there is no evidence of financial counseling.

Personal Conduct

On March 27, 2015, when Appellant completed his e-QIP, he responded to certain questions pertaining to his finances found in Section 26 – Financial Record. Those questions asked if in the past seven years he had a lien placed against his property for failing to pay taxes or other debts (including financial obligations for which he was the sole debtor, or a cosigner or guarantor); had defaulted on any type of loan; had any bills

³⁸ GE 3, *supra* note 4, at 9.

³⁹ GE 3, *supra* note 4, at 9.

⁴⁰ GE 3, *supra* note 4, at 18.

⁴¹ GE 3, *supra* note 4, at 18; Applicant's Answer to the SOR, *supra* note 4, at 4; Tr. at 78-79.

⁴² GE 3, *supra* note 4, at 18.

⁴³ GE 9 (County Clerk's Detailed Case Information, downloaded March 16, 2017).

⁴⁴ Tr. at 38.

or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and if he was over 120 days delinquent on any debt not previously entered; as well as if he was currently over 120 days delinquent on any debt. Appellant essentially answered “no” to each of the questions with the exception of admitting that there was a default regarding the dispute identified above with relation to the allegation in SOR ¶ 1.k. He certified that his responses to those questions were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, either false or misleading.

At the time he completed his e-QIP, Appellant claimed he was unaware that he had any such delinquent accounts, and he contended that they were corporate accounts or accounts that were used for corporate purposes for which he was not personally responsible. Appellant contends that he first learned that some of those accounts were delinquent when he was apprised of them by the OPM investigator in May 2015. He stated that the investigator presented him with “a handful of credit report issues none of which rose to the level of most of [the allegations set forth in the SOR] items and none of which were judgments or liens.”⁴⁵ He went on to say that the accounts they discussed were “extremely minor compared to those listed in [the SOR].”⁴⁶ Those statements are false and misleading.⁴⁷ In Applicant’s Personal Subject Interview, the questioning covered at least one dozen accounts, specifically including the tax lien. He denied making a deliberate false statement regarding his financial obligations.

Character References

The former corporate special projects manager and facility alternate security officer with Applicant’s corporation, and now the facility security officer and an account manager with the newly merged organization, has known and worked with Applicant for over 10-11 years. He has no reason not to recommend Applicant for a position of trust.⁴⁸

⁴⁵ Applicant’s Answer to the SOR, *supra* note 4, at 5.

⁴⁶ Applicant’s Answer to the SOR, *supra* note 4, at 6.

⁴⁷ Unalleged conduct can be considered for certain purposes, such as: (a) to assess an appellant’s credibility; (b) to evaluate an appellant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an appellant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for a 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 Appellant’s misleading or false statements to the OPM investigator, not alleged in the SOR, will, nevertheless, be considered only for the five purposes listed above.

⁴⁸ Tr. at 90-96.

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.”⁴⁹ 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.”⁵⁰

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.”⁵¹ 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.⁵²

⁴⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁵⁰ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁵¹ “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).

⁵² 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."⁵³

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."⁵⁴ 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.

⁵³ *Egan*, 484 U.S. at 531.

⁵⁴ 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.

The SOR, as amended, identified 14 purportedly delinquent accounts that had been placed for collection or charged off, or filed as a tax lien or judgment, as generally reflected by Applicant's 2015 credit report, his 2016 credit report, or his 2017 credit report. Those debts total approximately \$1,709,759. He contended that they were corporate accounts or accounts that were used for corporate purposes for which he was not personally responsible. Because he decided he was not personally responsible, he has taken little, if any, action to resolve most of them. The judgment was resolved with the foreclosure and the payment by Applicant of \$7,500. One credit card account has been resolved without evidence of how or why it has been considered satisfied. Aside from pending litigation pertaining to Applicant's default on the mortgage on his residence, all the remaining accounts remain unresolved. 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;
- (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 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;⁵⁵ and

⁵⁵ 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

(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 ¶ 20(b) minimally applies. None of the remaining conditions apply. As noted above, Applicant has a lengthy history of involvement in business. He was the chairman of the board of a corporation that was the parent company of the corporation for which he was the president, co-located at the same address until the parent company closed in August 2014 when the building was placed into a foreclosure status. At that point, Applicant relocated his remaining corporate entity to his residence. Applicant offered no explanations as to why his payments stopped. Without substantially more information, it is difficult to conclude that Applicant's financial problems were largely beyond his control because of a possible business downturn.

In March 2015, Applicant took on a well-paid (\$200,000 annual salary) position of vice president with his current employer, and he essentially ignored most of the debts that were in his individual name or jointly held in his name and his wife's name. He failed to initiate any good-faith efforts to repay or otherwise resolve his debts. Instead, he simply disputed the debts, but he failed to furnish documentary proof to substantiate the basis for his disputes. Even with those debts that were not successfully disputed, he failed to accept the decision of the credit reporting agencies, and instead ceased making any other possible resolution efforts. Regardless of the purposes for which Applicant incurred his debts, personal or otherwise, he remains legally responsible for those debts. Simply deciding that the accounts were used for corporate purposes does not release him from personal responsibility. As noted above, Applicant failed to support his position with any documentation related to the type of the account (individual or corporate), history of payments (personal or corporate), or any letters to or from the creditor. There is no evidence of financial counseling.

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

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)).

reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

It appears that Applicant's plan, according to his track record, was to simply dispute and ignore, or in at least one instance, litigate. When confronted with the issues that may have caused his financial problems, Applicant failed to act responsibly.⁵⁶ Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.⁵⁷

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 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) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar

⁵⁶ "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.

⁵⁷ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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, when Appellant completed his e-QIP, he responded to certain questions pertaining to his finances found in Section 26 – Financial Record. Those questions asked if in the past seven years he had a lien placed against his property for failing to pay taxes or other debts (including financial obligations for which he was the sole debtor, or a cosigner or guarantor); had defaulted on any type of loan; had any bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and if he was over 120 days delinquent on any debt not previously entered; as well as if he was currently over 120 days delinquent on any debt. Appellant essentially answered “no” to each of the questions with the exception of admitting that there was a default regarding the dispute identified above with relation to the allegation in SOR ¶ 1.k. He certified that his responses to those questions were “true, complete, and correct” to the best of his knowledge and belief, but the responses to those questions were, in fact, either false or misleading.

At the time he completed his e-QIP, Appellant claimed he was unaware that he had any such delinquent accounts, and he contended that they were corporate accounts or accounts that were used for corporate purposes for which he was not personally responsible. Applicant’s comments provide sufficient evidence to examine if his submissions were deliberate falsifications, as alleged in the SOR, or merely inaccurate answers that were the result of oversight or misunderstanding of the true facts on his part. Proof of incorrect answers, 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.⁵⁸

Applicant’s responses and explanations appear to be inconsistent. If, as he claimed, the accounts were corporate accounts versus personal accounts, it was

⁵⁸ 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).

incumbent upon him to say he was aware of the delinquent accounts, but that they were corporate accounts. Instead, he simply denied the existence of the delinquent accounts. An example of Applicant's lack of candor, although no longer alleged in the SOR, is found in his one "yes" response. He claimed the lender brought the action against the corporation for not timely providing a financial statement; because the lender pulled out of the market; and because it failed to comply with a forbearance agreement awaiting sale of an asset. In truth, the action was taken because Applicant (and others) had defaulted on their payments for a series of loans. Another example of his lack of candor is his denial that his OPM interview touched upon delinquent accounts, none of which were judgments or liens. The tax lien was discussed, but Applicant claimed to have no knowledge of it.

When Applicant was offered the opportunity to submit documentation to prove that the accounts were corporate accounts versus personal accounts, or to show that the charges were for corporate purposes versus personal purposes, he failed to take advantage of that opportunity. In the absence of more persuasive evidence to the contrary, I conclude that, with respect to his responses in the e-QIP, 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, but I conclude that none of them apply. Applicant's actions under the circumstances continue to cast 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.⁵⁹

⁵⁹ 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).

There is some evidence in favor of mitigating Applicant's conduct. Applicant is a 60-year-old employee of a defense contractor. He has been a vice president with the company since March 2015. He was previously the founder and president of a family-held corporation from January 1983 until March 2015, when the two companies merged. He has held a top secret security clearance since 1991. A work colleague of 10-11 years has no reason not to recommend Applicant for a position of trust.

The disqualifying evidence under the whole-person concept is more substantial. As noted above, the SOR, as amended, identified 14 purportedly delinquent accounts that had been placed for collection or charged off, or filed as a tax lien or judgment. He initially gave false or misleading information about those accounts, or claimed to be unaware of them. He later contended that they were corporate accounts or accounts that were used for corporate purposes for which he was not personally responsible. Because he decided he was not personally responsible, he took little, if any, action to resolve most of them. The judgment was resolved with the foreclosure and the payment by Applicant of \$7,500. One credit card account was resolved without evidence of how or why it has been considered satisfied. Aside from pending litigation pertaining to Applicant's default on the mortgage on his residence, all the remaining accounts remain unresolved. With a \$200,000 annual salary, Applicant was in a position to make some good-faith efforts to resolve those delinquent accounts. Instead, he chose to ignore them.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁶⁰

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.

⁶⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has demonstrated a rather unusual, but negative, track record of debt reduction and elimination efforts. His plan was to simply dispute and ignore, or in at least one instance, litigate. To this day, Applicant continues to deny responsibility for the debts. Moreover, he has done little, if anything, to furnish me with documentation to support his contentions that the accounts were corporate accounts versus individual or personal accounts. Because of the amounts owed, there is some question if Applicant's financial situation is under better control.

Overall, the evidence leaves me with substantial 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. 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 |
| Subparagraphs 1.a. through 1.d: | Against Applicant |
| Subparagraph 1.e.: | For Applicant |
| Subparagraph 1.f.: | Against Applicant |
| Subparagraph 1.q.: | For Applicant |
| Subparagraphs 1.h. through 1.j.: | Against Applicant |
| Subparagraph 1.k.: | For Applicant |
| Subparagraphs 1.l. and 1.m.: | Against Applicant |
| Subparagraph 1.p.: | Against Applicant |
| Subparagraphs 1.g., 1.n., and 1.o.: | Withdrawn |
| 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 national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge