



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03399

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

12/30/2014

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On October 2, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On August 4, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility - Division A (CAF) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

¹ Item 5 ((SF 86), dated October 2, 2013).

September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make a preliminary affirmative finding under the Directive 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. In a statement, notarized August 18, 2014, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.² Because he had failed to admit or deny certain allegations in the SOR there was an exchange of e-mails later that month until complete responses could be obtained. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on October 15, 2014, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to his case. Applicant received the FORM on October 28, 2014. A response was due on November 27, 2014, but as of December 4, 2014, he had not submitted any response. The case was assigned to me on December 5, 2014. As of the date of this decision, no response had been received.

Findings of Fact

In his Answer to the SOR, including his subsequent e-mails, Applicant denied three of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. through 1.c.). In response to three other allegations (¶¶ 1.k., 1.l., and 1.o.) he responded that arrangements were being made to satisfy or pay the respective accounts. His responses to the remaining allegations were "satisfied/removed" with a date. Although Department Counsel construed those responses as admissions of those respective allegations, because the dates provided by Applicant predated the SOR, I consider the responses to be denials. However, as to the allegations for which arrangements were being made, I construe those responses as admissions. Applicant's admissions 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 58-year-old employee of a defense contractor. He has been serving as a driver with his current employer since January 2012.³ He was previously unemployed from December 2011 until January 2012.⁴ His education is unknown. He

² Item 4 (Applicant's Answer to the SOR, dated August 18, 2014).

³ Item 5, *supra* note 1, at 9.

⁴ Item 5, *supra* note 1, at 10.

has never served with the U.S. military.⁵ He has never held a security clearance.⁶ Applicant was married in November 1996, and divorced in May 1997.⁷

Financial Considerations

It is unclear when or why Applicant's finances became so unmanageable that he was unable to maintain his monthly payments, resulting in some of his accounts becoming delinquent and placed for collection as early as 2007. The SOR identified 17 purportedly continuing delinquent debts totaling approximately \$18,889 that had been placed for collection, as reflected by a December 2013 credit report.⁸ Of the 17 accounts listed, 14 are delinquent medical accounts.

Applicant indicated that he had satisfied and removed one \$500 medical account (SOR ¶ 1.m.) in March 2014; one \$306 medical account (SOR ¶ 1.n.) in May 2014; three medical accounts for \$5,875 (SOR ¶ 1.i.), \$1,128 (SOR ¶ 1.j.), and \$8,635 (SOR ¶ 1.q.) in June 2014; one \$115 telephone account (SOR ¶ 1.p.) in June 2014; and five medical accounts for \$218 (SOR ¶ 1.d.), \$251 (SOR ¶ 1.e.), \$101 (SOR ¶ 1.f.), \$50 (SOR ¶ 1.g.), and \$66 (SOR ¶ 1.h.) in July 2014. He added that one \$50 medical account (SOR ¶ 1.o.) would be paid by September 1, 2014; that arrangements were being made to pay off one \$672 credit card account (SOR ¶ 1.k.); and that arrangements were being made to satisfy one \$359 medical account (SOR ¶ 1.l.). The only evidence regarding the status of Applicant's handling of those accounts is his written comments on the SOR. He failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support his contentions that those accounts were either already resolved or that repayment arrangements had been agreed to. As to Applicant's comments that the items had been removed, it is unclear from what or where they had been removed.

In his Answer to the SOR, Applicant stated that he had been "working hard to clean up [his] credit, and maintain a good credit history, and will continue to do so."⁹ Applicant's credit history has not been good.¹⁰ There is no evidence to indicate that Applicant ever received financial counseling. It is not known what Applicant's financial resources may be because he did not submit a personal financial statement to indicate

⁵ Item 5, *supra* note 1, at 15.

⁶ Item 5, *supra* note 1, at 25.

⁷ Item 5, *supra* note 1, at 17.

⁸ Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 7, 2013).

⁹ Item 4, *supra* note 2, at 6.

¹⁰ When Applicant completed his SF 86 in October 2013, he indicated that in the past seven years he had not had any bills or debts turned over to a collection agency or that he was or is currently over 120 days delinquent on any debt. Considering the information appearing in his credit report, it appears that his characterization of his financial history was not accurate. The information regarding Applicant's SF 86 responses and false characterization of his financial history was not alleged in the SOR and will not be considered as disqualifying, except that it will be significant to the whole-person analysis appearing below.

his net monthly income, his monthly household or debt expenses, or whether or not he has any funds remaining at the end of each month for discretionary use or savings. Applicant offered no evidence to indicate that his financial problems are now under control.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”¹¹ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹²

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”¹³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation,

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

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

¹³ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.¹⁴

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."¹⁵

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."¹⁶ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

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

¹⁵ *Egan*, 484 U.S. at 531

¹⁶ See Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), a “history of not meeting financial obligations” may raise security concerns. Applicant has had a long-standing problem with his finances which started as early as 2007. He found himself with insufficient funds to continue making his routine monthly payments and various accounts became delinquent, and were placed for collection. AG ¶¶ 19(a) 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹⁷

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since about 2007 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant was previously unemployed from December 2011 until January 2012, but that period came several years after his initial financial problems. He offered no evidence of a good-faith effort to resolve any of his debts and essentially ignored them until 2014. As noted above, he failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support his contentions that his delinquent accounts were either resolved or that repayment arrangements had been agreed to in 2014. As to Applicant’s comments that the items had been removed, it is unclear from what or where they had been removed.

¹⁷ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

There is no evidence to indicate that Applicant ever received financial counseling. It is not known what Applicant's financial resources may be, or if he has any funds remaining at the end of each month for discretionary use or savings. There is no evidence to reflect that Applicant's financial problems are under control. Applicant has not acted responsibly by failing to address his delinquent accounts and by making little, if any, efforts of working with his creditors.¹⁸ Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment.¹⁹

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁰

There is some evidence in favor of mitigating Applicant's conduct. He was unemployed from December 2011 until January 2012. He has declared his intention of cleaning up his credit and maintaining a good credit history.

The disqualifying evidence under the whole-person concept is more substantial. Applicant's long-standing failure to repay creditors between 2007 and 2014, or to

¹⁸ "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.

¹⁹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

²⁰ 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).

arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance. It is not known what Applicant's financial resources may be, or if he has any funds remaining at the end of each month for discretionary use or savings. Thus, there are no indications that Applicant's financial problems are under control. Applicant has simply made the assertions that his delinquent accounts were either resolved in 2014, that repayment arrangements had been agreed to, or that other accounts had been removed. In the absence of documentation to support his assertions, in light of his failure to accurately portray the true status of his finances in his SF 86, little weight can be given to those assertions. Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment. Considering the relative absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:²¹

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 essentially negative track record of debt reduction and elimination efforts, generally ignoring his debts. 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. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	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