



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-06589  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Candace L. Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

11/03/2015

**Decision**

GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On April 14, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On January 24, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (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 September 1, 2006. The SOR alleged security concerns under Guideline F (Financial

<sup>1</sup> Item 3 (e-QIP, dated April 14, 2014).

Considerations), and detailed reasons why the DOD CAF was unable to make an 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 sworn statement, dated March 3, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing.<sup>2</sup> A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on August 13, 2015, 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 August 21, 2015. A response was due by September 20, 2015. On September 10, 2015, Applicant submitted his response with attachments. Department Counsel had no objections to the documents submitted, and I marked them as Applicant Items (AI) A through AI D. The case was assigned to me on October 5, 2015.

### Findings of Fact

In his Answer to the SOR, Applicant admitted both of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.a. and 1.b.). 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 57-year-old employee of a defense contractor. He has been serving as a graphic artist-illustrator and information technology analyst with his current employer since March 2012.<sup>3</sup> He was previously a senior graphic analyst with another defense contractor from December 1997 until March 2012.<sup>4</sup> A high school graduate at the age of 17, Applicant did not pursue any college education.<sup>5</sup> Applicant enlisted in the U.S. Army in September 1977 and served honorably until he retired as a master sergeant (E-8) in September 1997.<sup>6</sup> Applicant was first granted a secret security clearance in 1979, a top secret security clearance in 1983, and access to sensitive

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<sup>2</sup> Item 2 (Applicant's Answer to the SOR, dated March 3, 2015).

<sup>3</sup> Item 3, *supra* note 1, at 8-9.

<sup>4</sup> Item 3, *supra* note 1, at 9-10.

<sup>5</sup> Item 3, *supra* note 1, at 8; Item 5 (Personal Subject Interview, dated June 10, 2014), at 2; Item 4 (Security Clearance Application, dated August 27, 2003), at 13-14.

<sup>6</sup> Item 3, *supra* note 1, at 11-12; Item 4, *supra* note 5, at 16. Applicant neglected to submit any of his military records so there is no evidence of awards, decorations, assignments, or deployments.

compartmented information (SCI) in 1993.<sup>7</sup> Applicant was married to his first wife in October 1983 and divorced in May 1986.<sup>8</sup> He married his current wife in June 1986.<sup>9</sup> He has one son (born in 1986) and one daughter (born in 1987).<sup>10</sup>

## Financial Considerations

There was apparently nothing unusual about Applicant's finances until the period 2012 to 2014. A review of Applicant's May 2014 credit report revealed that two individual bank credit card accounts had been charged off in September 2012 after being over 150 or 180 days past due,<sup>11</sup> and seven other accounts had at one point during 2014, been past-due 30, 60, or 90 days before being brought current.<sup>12</sup> When Applicant completed his e-QIP in April 2014, he denied having any delinquent accounts.<sup>13</sup> During his subsequent interview with an investigator from the U.S. Office of Personnel Management (OPM) in June 2014, Applicant stated that he had "no delinquent accounts that he knows of."<sup>14</sup> When he was confronted with the two delinquent credit card accounts (SOR ¶¶ 1.a. and 1.b.), Applicant opined that they were probably his wife's accounts, and he indicated he would investigate them.<sup>15</sup> It appears that Applicant's wife was substantially active in handling the family finances.

The SOR identified the two delinquent debts that had been placed for collection and charged off, as reflected by the May 2014 credit report and a November 2014 credit report.<sup>16</sup> The combined unpaid balance of those two debts (\$8,564 and \$7,181) totals approximately \$15,745. Applicant inquired of his wife as to the background of the two accounts, but she was unable to add any further information. After obtaining a credit report, Applicant contacted the creditor to obtain any information that might be available. After several unsuccessful attempts to locate the accounts, the creditor finally located them, and the following scenario was developed. Applicant's wife had routinely received monthly statements in the mail and she would make what she erroneously concluded were the monthly minimum payments. While she was making monthly payments, the payments did not always meet the required monthly minimums, and after time, the accounts became delinquent. The record is silent as to how or why Applicant's wife

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<sup>7</sup> Item 5, *supra* note 5, at 2.

<sup>8</sup> Item 3, *supra* note 1, at 15.

<sup>9</sup> Item 3, *supra* note 1, at 14.

<sup>10</sup> Item 3, *supra* note 1, at 16-17.

<sup>11</sup> Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 7, 2014), at 7, 20.

<sup>12</sup> Item 6, *supra* note 11, at 5, 9-10, 14, 18-19.

<sup>13</sup> Item 3, *supra* note 1, at 25-27.

<sup>14</sup> Item 5, *supra* note 5, at 3.

<sup>15</sup> Item 5, *supra* note 5, at 3.

<sup>16</sup> Item 7 (Equifax Credit Report, dated November 20, 2014), at 2.

failed to make the monthly minimum payments. In September 2012, both accounts were charged off.<sup>17</sup> Applicant noted that the creditor had never advised him that the accounts had been charged off. Once the accounts were charged off, no monthly statements or collection notices were issued.<sup>18</sup> Once again, the record is silent as to why Applicant's wife never informed Applicant that the monthly statements had ceased coming.

Upon being advised of the true status of the accounts, Applicant and the creditor entered into repayment agreements. He agreed to make monthly payments of \$357 on one account and \$250 on the other account commencing in February 2015.<sup>19</sup> He has routinely made those payments by phone as agreed.<sup>20</sup> As of August 2015, the unpaid balances on the accounts have been reduced to approximately \$6,423 and \$5,931.<sup>21</sup> The accounts are in the process of being resolved.

With his Answer to the FORM, Applicant submitted several Wage and Tax Statements (W-2) for the tax years 2012 through 2014. The combined annual family income for 2012 was approximately \$146,424; for 2013, it was approximately \$142,863; and for 2014, it was approximately \$144,958.<sup>22</sup> Applicant has never received financial counseling.<sup>23</sup> With no other delinquent accounts listed in his most recent credit report, it appears that Applicant's financial problems are 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."<sup>24</sup> 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."<sup>25</sup>

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<sup>17</sup> Item 2, *supra* note 2, at 4.

<sup>18</sup> Item 2, *supra* note 2, at 4.

<sup>19</sup> AI A (Payment Schedules, various dates).

<sup>20</sup> Item 2, *supra* note 2 (Substitute Cancelled Checks, various dates); AI B (Substitute Cancelled Checks, various dates); AI C (Statements, various dates).

<sup>21</sup> AI C, *supra* note 20.

<sup>22</sup> AI D (W-2's, various dates).

<sup>23</sup> Item 5, *supra* note 5, at 3.

<sup>24</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>25</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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."<sup>26</sup> 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.<sup>27</sup>

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."<sup>28</sup>

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."<sup>29</sup> Thus, nothing

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<sup>26</sup> "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 (4<sup>th</sup> Cir. 1994).

<sup>27</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>28</sup> *Egan*, 484 U.S. at 531.

<sup>29</sup> See Exec. Or. 10865 § 7.

in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

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

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

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant's financial problems initially arose in 2012 and continued for several years thereafter. Two credit card accounts became delinquent and were placed for collection, and charged off. While there is a brief history a failing to make monthly minimum payments on the two accounts, there is no evidence of an inability or unwillingness to do so. AG ¶ 19(c) has been established, but ¶ 19(a) has not.

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.”<sup>30</sup>

AG ¶ 20(d) applies, and AG ¶¶ 20(a), 20(b), 20(c), partially apply. Applicant’s financial problems were not caused by his frivolous or irresponsible spending, and he did not spend beyond his means. Instead, those limited financial problems occurred without his knowledge. Applicant’s wife was apparently in charge of at least a segment of the family finances. She routinely made monthly payments for the two credit card accounts, but without Applicant’s knowledge, her payments did not always meet the required monthly minimum amount. Over time, the accounts became delinquent and in September 2012, they were charged off. It is unclear as to how or why she failed to make the monthly minimum payments or why she failed to advise Applicant of the situation. He was never advised of the failure to maintain monthly minimum payments or that the accounts had been charged off. Once the accounts were charged off, no further monthly statements or collection notices were issued to him. Applicant and his wife apparently served as a team in handling the family accounts. Under normal circumstances, that process is a rather acceptable one. Applicant’s wife failed him in neglecting to fulfill her share of the responsibilities. His failure to oversee her activities more closely, in this instance, may not have been the best course of action, but his actions do not reflect a lack of judgment and reliability. This situation occurred under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.<sup>31</sup> Once he learned of the situation, Applicant initiated a good-faith effort to resolve the two delinquent debts, and he is currently in the process of doing so. As noted above, there are clear indications that the problem is being resolved or is under control.

Security clearance adjudications are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be

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<sup>30</sup> 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)).

<sup>31</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. Applicant has established and followed such a plan.

### **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.<sup>32</sup>

There is some evidence against mitigating Applicant's conduct. Applicant failed to insure that two of his credit card accounts were handled properly and the monthly minimum payments were not made by his wife. Because she had apparently miscalculated the minimum amounts due, on many occasions, payments less than the minimum amount due were made. As a result, two accounts became delinquent, were placed for collection, and charged off.

The mitigating evidence is more substantial and compelling. Applicant served honorably in the U.S. Army and retired as an E-8. He has held secret or top secret security clearances for over 30 years, sometimes with access to SCI, without any negative incidents. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. Applicant's financial problems were not caused by his frivolous or irresponsible spending, and he did not spend beyond his means. Rather, they were in some measure beyond his control. They arose in 2012, when his wife failed to fulfill her financial responsibilities in making monthly minimum payments on two credit card accounts. They were exacerbated when Applicant's wife failed to inform him of the pending problem. Once he learned of the situation, Applicant did not ignore his two delinquent accounts. Instead,

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<sup>32</sup> 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. June 2, 2006).

he sought out the creditors and established repayment plans. He has made his routine monthly payments under those plans since they were established. With no other delinquent debts, there are clear indications that Applicant's financial problems are under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>33</sup>

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 a "meaningful track record" of debt reduction and elimination efforts. 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 AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. and 1.b.:	For Applicant

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<sup>33</sup> 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.

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ROBERT ROBINSON GALES  
Administrative Judge