



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



In the matter of:)
)
 ---) ISCR Case No. 15-03346
)
 Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esquire, Department Counsel
For Applicant: *Pro se*

05/04/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant 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 June 3, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On November 18, 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

¹ Item 3 (e-QIP, dated June 3, 2014).

September 1, 2006. The SOR alleged security concerns under Guideline F (Financial 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. On December 2, 2015, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on January 20, 2016, 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 January 27, 2016. A response was due by February 26, 2016. Applicant responded to the FORM, and on an unspecified date before the due date, he submitted a two-page statement without any attached documentation. Department Counsel did not object to the submission. The case was assigned to me on March 31, 2016.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.r.). 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 39-year-old employee of a defense contractor. He has been an operator with his current employer since June 2014. Among a variety of other jobs, he previously held positions with different employers as a customer service worker.² He is a 1995 high school graduate with additional coursework, but no degree.³ Applicant enlisted in the U.S. Navy in June 1995, and he was honorably discharged in August 2006.⁴ He has been unemployed on two occasions: from July 2011 until March 2012, and from August 2006 until December 2006.⁵ He was granted a secret security clearance in 1995.⁶ Applicant was married in October 1999 and divorced in January

² Item 3, *supra* note 1, at 13-17.

³ Item 4 (Personal Subject Interview, dated June 26, 2014), at 7; Item 3, *supra* note 1, at 11-12.

⁴ Item 3, *supra* note 1, at 18-20. There is very little information in the case file regarding Applicant's navy service except for brief discussions of his assignments, positions held, a disciplinary action, and mental health/marital counseling. Although there is a brief mention of navy cruises taken, there no indication that Applicant participated in any deployments to combat zones. Military awards and decorations were not reported.

⁵ Item 4, *supra* note 3, at 12; Item 3, *supra* note 1, at 15, 18.

⁶ Item 4, *supra* note 3, at 14.

2011.⁷ He has three children: daughters born in 2000 and 2006, and a son born in 2003.⁸

Financial Considerations⁹

It is unclear when Applicant first experienced financial difficulties, but in reviewing his credit reports from June 2014,¹⁰ and November 2015,¹¹ as well as his comments to an investigator from the U.S. Office of Personnel Management (OPM),¹² it appears that he lost a residence through foreclosure in January 2007, and several other delinquent accounts existed as far back as 2009-2010, with additional ones entering that status over the ensuing years. Applicant had delinquent utility accounts, credit card accounts, charge accounts, child support, multiple cellular telephone accounts, and satellite television accounts. Although he does not specifically attribute any one particular cause for his financial problems, he did mention a divorce, years of child custody battles, his 70 percent disability, and a period of unemployment. As to some specific accounts, he offered some brief explanations, but as to the vast majority of the alleged accounts, he claimed to have no knowledge and assumed his ex-wife was in some way associated with them.

The SOR identified 17 purportedly continuing delinquent accounts, totaling approximately \$15,532, which had been placed for collection or charged off. In addition, there is the one foreclosure (SOR ¶ 1.r.). Although Applicant contended that he had resolved some accounts, both SOR-related and non-SOR-related, or he claimed he made or makes routine payments on some accounts, he failed to submit any documentation to support his contentions pertaining to his actions or activities to resolve them. There is no documentary evidence that any of the accounts were placed in repayment plans or that payments were made for any of them. Although Applicant promised the OPM investigator in June 2014 that he would determine if he is responsible for the accounts and pay them off if he was responsible for them, to date, nearly two years later, he failed to submit any documentation to support his contentions or disputes. There is no documentary evidence to indicate that Applicant made any payments on any of the SOR-related delinquent accounts, including two accounts with minimal balances of \$82 and \$85.

⁷ Item 4, *supra* note 3, at 13; Item 3, *supra* note 1, at 23-24.

⁸ Item 3, *supra* note 1, at 28-29.

⁹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 17, 2014); Item 5 (Equifax Credit Report, dated November 2, 2015); Item 3, *supra* note 1, at 36-43; Item 4, *supra* note 3, at 14-24; Item 2 (Applicant's Answer to the SOR, dated December 2, 2015), at 4.

¹⁰ Item 6, *supra* note 9.

¹¹ Item 5, *supra* note 9.

¹² Item 4, *supra* note 3.

Those debts and their respective current status, according to the above-cited credit reports, Applicant's comments to the OPM investigator, his Answer to the SOR, and his Response to the FORM, are described as follows: an account with an attorney with a past-due and unpaid balance of \$1,668 that was increased to \$2,617 (SOR ¶ 1.a.); a satellite television account with a past-due and unpaid balance of \$553 (SOR ¶ 1.b.); a cable television account with an unpaid balance of \$176 (erroneously alleged in the SOR as \$553) (SOR ¶ 1.c.); a cellular telephone account with a past-due balance of \$415 (SOR ¶ 1.d.); a credit card account with a past-due balance of \$426 that was charged off (SOR ¶ 1.e.); an unspecified account with the state department of licensing with a past-due and unpaid balance of \$85 (SOR ¶ 1.f.); a cable television account with a past-due and unpaid balance of \$209 (SOR ¶ 1.g.); a cellular telephone account with an unpaid balance of \$200 (SOR ¶ 1.h.); a cellular telephone account with a past-due and unpaid balance of \$1,371 (SOR ¶ 1.i.); a gas utility account with an unpaid balance of \$82 that Applicant supposedly disputed for unspecified reasons (SOR ¶ 1.j.); an unspecified type of account with a large bank with a past-due and unpaid balance of \$1,485 (SOR ¶ 1.k.); a bank credit card account with a past-due and unpaid balance of \$2,418 (SOR ¶ 1.l.); a bank credit card with a past-due and unpaid balance of \$1,007 (SOR ¶ 1.m.); a charge account with a past-due and unpaid balance of \$526 (SOR ¶ 1.n.); an unspecified utility account with a past-due balance of \$122 that was charged off (SOR ¶ 1.o.); a credit card account with a past-due and unpaid balance of \$2,021 (SOR ¶ 1.p.); and a state department of social and health services child support account with an initial unpaid balance of \$1,442 that was reduced to \$571 (SOR ¶ 1.q.).

During his OPM interview, Applicant acknowledged that he had never had any debt consolidation or financial counseling, and he claimed to be financially capable of meeting his financial obligations.¹³ In his Answer to the SOR, he added that half of his current pay goes to child support, and the remainder goes to pay his bills and for food, with "not much left over for much more, even when [his three] children ask for things like toys and clothing."¹⁴ Applicant failed to furnish a personal financial statement setting forth his net monthly income; his monthly household expenses; and his monthly debt payments. In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. Thus, it is nearly impossible to determine if Applicant's finances are under control or if he is still experiencing financial difficulties. In the absence of any documentation to confirm Applicant's contentions regarding what he has claimed to be doing with respect to his creditors and his delinquent accounts, there is a paucity of 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

¹³ Item 4, *supra* note 3, at 24.

¹⁴ Item 2, *supra* note 9.

emphasizing, “no one has a ‘right’ to a security clearance.”¹⁵ 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.”¹⁶

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.”¹⁷ 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.¹⁸

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

¹⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹⁷ “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).

¹⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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.”¹⁹

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.”²⁰ 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. . . .

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, when he lost a residence through foreclosure, and continued over the ensuing years. It is unclear if he had insufficient funds to continue making his routine monthly payments or if he simply neglected to do so. A variety of utility accounts, credit card accounts, charge accounts, child support, multiple cellular telephone accounts, and satellite television accounts became delinquent. Accounts were placed for collection, and in some instances were charged off. And there was the foreclosure. AG ¶¶ 19(a) and 19(c) apply.

¹⁹ *Egan*, 484 U.S. at 531.

²⁰ See Exec. Or. 10865 § 7.

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.”²¹ Under AG ¶ 20(e) it is potentially mitigating if “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. AG ¶ 20(b) minimally applies. 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.” Although Applicant did not attribute any one particular cause to his financial problems, he did mention a divorce, years of child custody battles, his disability, and a period of unemployment, as possible factors. Applicant’s divorce occurred in 2011, well after the financial problems arose. Applicant failed to identify the years during which the custody battles took place. He was unemployed from August 2006 until December 2006, and his most recent period of unemployment commenced in July 2011 and lasted until March 2012. Under those circumstances, it would appear that the first period of unemployment may have had some degree of initial negative impact on Applicant’s finances, while the most recent period of unemployment would contribute to his more current difficulties. Those factors were, to some degree, beyond Applicant’s control, but the impact of them individually or collectively, was not discussed. Neither was the contention that he is 70 percent disabled. Other than claiming that he had resolved, or is in the process of resolving, certain delinquent accounts, Applicant failed to demonstrate what actions he has taken to address his delinquent debts, and he has offered no

²¹ 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)).

documentary evidence of a good-faith effort to resolve any of them. He essentially ignored them, and seemingly continues to do so.

There is no evidence to indicate that Applicant received financial counseling. In the absence of a personal financial statement, or any current information pertaining to his monthly income, expenses, and available funds for discretionary savings or spending, it is impossible to determine the current state of his financial affairs. Because of his failure to confirm payment of even his smallest delinquent accounts, and his failure to furnish documentation regarding any of the accounts, the evidence leads to the conclusion that Applicant's financial problems are not under control. Applicant has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors.²² Applicant's actions under the circumstances confronting him cast doubt on his current reliability, trustworthiness, and good judgment.²³

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.²⁴

²² "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.

²³ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

²⁴ 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. He has been an operator with his current employer since June 2014. Applicant is an honorably discharged veteran of 11 years in the U.S. Navy. He was granted a secret security clearance in 1995. There is no evidence of security violations.

The disqualifying evidence is more substantial. Applicant has declared his intentions of bringing his accounts current and repaying them. However, to date, even two years after declaring his intentions, he has not. Instead, Applicant has seemingly continued to ignore those delinquent accounts. Applicant offered no evidence as to his reputation for reliability, trustworthiness, and good judgment. Applicant's long-standing failure over the years to voluntarily repay his creditors, even in the smallest amounts, or to arrange even the most reasonable payment plans, reflects traits which raise concerns about his fitness to hold a security clearance. Although he made declarations that some accounts had been resolved, he offered no documentary evidence to support his declarations. There are no clear indications that Applicant's financial problems are under control. Applicant's actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. Considering the 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:²⁵

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 voluntary debt reduction and elimination efforts, generally ignoring his delinquent debts. 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

²⁵ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant has failed to mitigate 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:	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
Subparagraph 1.r:	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