



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



In the matter of:)
)
 ---) ISCR Case No. 18-00286
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro se*

03/04/2019

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On June 15, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On August 31, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (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 Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear as to when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated September 5, 2018, Applicant responded to the SOR 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 by the Defense Office of Hearings and Appeals (DOHA) on December 3, 2018, and he was afforded an opportunity 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 Adjudicative Guidelines applicable to his case. Applicant received the FORM on December 20, 2018. Applicant's response was due on January 19, 2019. Applicant apparently chose not to respond to the FORM, for as of February 27, 2019, he had not done so. The case was assigned to me on February 27, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted without comments all of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.s.). 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 32-year-old employee of a defense contractor. He has been serving as a technician with his current employer (or subcontractor) since November 2016. A 2005 high school graduate, Applicant received an associate's degree in 2012, and a bachelor's degree in 2014. He has never served with the U.S. military. He has never been granted a security clearance. Applicant was married in 2012. He has no children.

Financial Considerations¹

During his enhanced subject interview conducted by an investigator from the U.S. Office of Personnel Management (OPM) in September 2017, Applicant initially denied having any judgments filed against him or having any accounts sent to collections. Upon being confronted with certain contrary facts, he either acknowledged the status of certain accounts, disputed the status of some accounts, overlooked some accounts, or claimed he did recall anything about other accounts. He subsequently attributed his financial issues to "bouts of unemployment and low paying jobs, where [he] was unable to cover

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 4 (e-QIP, dated June 15, 2017); Item 5 (Enhanced Subject Interview, dated September 19, 2017); Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated June 22, 2017); Item 7 (Equifax Credit Report, dated January 31, 2018).

all of his debt.”² But, he noted that in April 2017, he received a wage increase and that increase would enable him to start paying off his delinquent debts.³ In his Answer to the SOR, Applicant added that the debt was accrued because he was forced to use credit cards and sustained his debt. “Unfortunately this debt became too much and [he] was unable to pay any of it off.”⁴ In his e-QIP, Applicant noted only one period of unemployment (November 2011 until September 2012) after he was let go by mutual agreement (actually fired) following notice of unsatisfactory performance. During that period, he was a student supported by his wife and unemployment compensation. Although he was not unemployed for any reported period thereafter, another employer released him for unsatisfactory performance because Applicant routinely failed to follow the company’s shift schedule and was repeatedly disciplined and counseled.⁵

The SOR identified 19 delinquent accounts that had been placed for collection, charged off, or filed as judgments, all generally reflected by Applicant’s June 2017 or January 2018 credit reports. Applicant acknowledged that he had made no effort to resolve the accounts, but stated that he planned to do so once the accounts with lower balances are paid off.⁶ Those debts, totaling approximately \$93,582, all of which were placed for collection, are described below:

(SOR ¶ 1.a.) an unspecified type of account for \$1,355 that was sold to a debt purchaser before becoming a judgment; (SOR ¶ 1.b.) an unspecified type of account for \$6,555 that was sold to a debt purchaser before being reduced to a judgment; (SOR ¶ 1.c.) an unsecured guaranteed loan for \$3,067 that was charged off; (SOR ¶¶ 1.d. through 1.p.) education loans that fell into default and were returned to the U.S. Department of Education in the amounts of \$5,116; \$4,032; \$6,121; \$3,965; \$6,121; \$376; \$4,497; \$3,164; \$6,619; \$4,266; \$6,913; \$8,924; and \$9,278; (SOR ¶ 1.q.) an unspecified type of account for \$11,621 that was charged off; (SOR ¶ 1.r.) an unspecified type of account for \$1,521 that went to judgment; and (SOR ¶ 1.s.) an unspecified type of account for \$71.

Applicant failed to indicate his current monthly net pay, monthly expenses, debt payments, or if he has any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of financial counseling. There is no evidence that since his April 2017 pay increase he has made any

² Item 5, *supra* note 1, at 11.

³ Item 5, *supra* note 1, at 6-11.

⁴ Item 3 (Answer to the SOR, dated September 5, 2018).

⁵ Item 5, *supra* note 1, at 5.

⁶ Item 5, *supra* note 1. It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

efforts to contact his creditors, enter into repayment plans with any creditors, or make any payments to any creditors to resolve any of his delinquent or charged-off accounts, even to the one creditor to which he owes \$71. While not alleged in the SOR, it is noted that Applicant also had an account with a jewelry company with a high credit of \$4,500 that went to judgment, but was eventually paid off in 2016.⁷ Other than his general statements about his future intentions, Applicant offered no evidence to indicate that his financial situation has improved, or that it is 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.”⁸ 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.”⁹

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,

⁷ Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant’s unlisted and unalleged delinquent accounts, as well as his lack of candor on his e-QIP, will be considered only for the five purposes listed above.

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”¹⁰ 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.¹¹

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.”¹²

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.”¹³ 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.

¹⁰ “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).

¹¹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹² *Egan*, 484 U.S. at 531.

¹³ See Exec. Or. 10865 § 7.

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.

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;
- (c) a history of not meeting financial obligations; and

The SOR identified 19 delinquent accounts that had been placed for collection, charged off, or filed as judgments, totaling \$93,582. Those delinquent accounts all continue to be unaddressed and unresolved, despite Applicant being fully employed since November 2016 (and receiving a salary increase in April 2017). Applicant claimed that when he was unemployed in 2011-2012, he was unable to make his required monthly payments, but it appears that he was simply content to remain unemployed for a period of time sufficient for him to continue his education (by increasing the unpaid balance of his student loans), and drawing unemployment benefits. Applicant's failure to even address the one delinquent debt in the amount of \$71 constitutes an unwillingness to satisfy his debts. 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;¹⁴

(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;¹⁵

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(b) minimally applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties

¹⁴ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

¹⁵ 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)).

make it difficult to conclude that it occurred “so long ago” or “was so infrequent,” or that it is “unlikely to recur.” Applicant attributed his financial difficulties to his one period of unemployment (November 2011 until September 2012), and insufficient funds to maintain his financial responsibilities. There is no documentation to reflect that Applicant made any efforts, much less “good-faith” efforts, before or after he was interviewed by OPM; before or after the SOR was issued in August 2018; or even after he was sent the FORM in December 2018, to: obtain financial counseling from a legitimate and credible source, such as a non-profit credit counseling service; dispute his delinquent accounts with the credit reporting agencies or the creditors themselves; contact his creditors to set up repayment plans; or indicate that payments had been made to his creditors.¹⁶

An applicant who begins to resolve his financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests.¹⁷ In this instance, to date, there is no evidence that any corrective actions have been taken by Applicant. There is no evidence to conclude that Applicant’s finances are under control.

Clearance decisions are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

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;

¹⁶ See ISCR Case No. 12-01335 at 5 (App. Bd. Dec. 29, 2017).

¹⁷ See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

(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.¹⁸

There is very little evidence mitigating Applicant's conduct. Applicant is a 32-year-old employee of a defense contractor, serving as a technician with his current employer or a subcontractor since November 2016. He had a non-SOR account with a jewelry company with a high credit of \$4,500 that went to judgment, but was eventually paid off in 2016.

The disqualifying evidence under the whole-person concept is more substantial. Applicant exhibited a lack of candor when he completed his e-QIP and denied having any financial issues. He actually had 19 delinquent accounts that had been placed for collection, charged off, or reduced to judgment totaling \$93,582. Those delinquent accounts all continue to be unaddressed and unresolved by Applicant, despite his being fully employed since November 2016, and receiving a salary increase in April 2017. Applicant has made no efforts to resolve his delinquent debts despite promising to do so. Applicant has not obtained financial counseling. There is no evidence of a budget, and he offered no evidence to indicate that his financial situation has improved, or that it is now under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:¹⁹

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

¹⁸ 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).

¹⁹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 extremely poor, if not non-existent, track record of debt reduction and elimination efforts, seemingly avoiding all of the debts in his name. 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.s.:	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