



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



In the matter of:)
)
 ---) ISCR Case No. 18-01928
)
 Applicant for Security Clearance)

Appearances

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

01/30/2019

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 October 9, 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 27, 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 29, 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 October 22, 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 November 15, 2018. Applicant's response was due on December 15, 2018. Applicant apparently chose not to respond to the FORM, for as of January 28, 2019, he had not done so. The case was assigned to me on January 25, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted without comments nearly all of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.j., 1.l. through 1.n., and 1.p.). 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 41-year-old employee of a defense contractor. He has been serving as a senior administrative logistics analyst with his current employer since October 2015. He was with the same employer, in a different position (warehouse administrator) and location from June 2013 until June 2014. A 1995 high school graduate, Applicant received a bachelor's degree in 2017. He served in an enlisted capacity with the U.S. Navy from March 1996 until he was honorably discharged in January 2007. He was granted a top secret clearance in 2008. Applicant has never married. 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 January 2018, Applicant attributed his financial issues to his loss of employment in October 2012, when the contract on which he was working ended and he was laid off. He remained unemployed until June 2013. Following his layoff, while he was no longer receiving his normal wages, each month

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (e-QIP, dated October 10, 2017); Item 4 (Enhanced Subject Interview, dated January 24, 2018); Item 4 (Subject Contact, dated February 12, 2018); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated December 7, 2017); Item 6 (Equifax Credit Report, dated June 4, 2018).

Applicant received \$600 in interest and dividends, \$1,969.70 from the GI Bill, and a Veterans Affairs benefit of \$113. Applicant used his savings and various credit cards to pay his bills, and he cashed out his 401(k), but failed to properly report his actions, resulting in increased state and federal taxes.² It appears that most of his accounts became delinquent in 2015. Two other actions by Applicant have had a negative impact on his financial situation: in October 2014, he loaned a girlfriend \$6,850, but she has refused to pay him back, and he does not anticipate her doing so; and in 2014, he leased a 2014 luxury sedan for a monthly payment of \$599.

On August 19, 2015, in a seemingly tactical effort to save his residence from foreclosure, Applicant filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. He listed assets worth \$356,712, including real property worth \$348,127; liabilities worth \$480,576. Included in that amount were \$320,987 in secured claims (\$285,012 mortgage lien, \$35,975 for a vehicle lease; \$17,629 in unsecured nonpriority claims (\$1,256 in state taxes, and \$16,373 in federal taxes); and \$141,960 in unsecured nonpriority claims (various consumer accounts, including credit cards).³ At the time of his bankruptcy filing, he reported a net monthly income of \$5,681;⁴ \$5,116 in expenses; and a remainder of \$565 available for saving or spending.⁵ By April 3, 2017, the bankruptcy trustee disbursed a total of \$7,035, including \$2,861 for administration expenses, and \$4,174 to two creditors combined.⁶ No further disbursements were made to any of the remaining creditors because, on April 3, 2017, Applicant moved to dismiss his bankruptcy case. An order was issued dismissing the case and vacating all automatic stays and injunctions.⁷

In addition to his Chapter 13 bankruptcy, the SOR identified 15 delinquent accounts that had been placed for collection or charged off as generally reflected by Applicant's December 2017 or June 2018 credit reports. For the vast majority of the debts, Applicant acknowledged that he had made no effort to resolve the accounts since his Chapter 13 bankruptcy was cancelled.⁸ Those debts, most of which were charged off, totaling approximately \$173,797, are described below:

(SOR ¶ 1.a., automobile lease for \$28,835 on a vehicle that was repossessed); (SOR ¶ 1.b., credit card for \$26,717); (SOR ¶ 1.c., credit card for \$26,581); (SOR ¶ 1.d., credit card for \$25,881); (SOR ¶ 1.e., credit card for \$17,651); (SOR ¶ 1.f., credit card for \$8,535); (SOR ¶ 1.g., credit card for \$8,266); (SOR ¶ 1.h., credit card for \$5,678); (SOR

² Item 4, *supra* note 1, at 10.

³ Item 7 (Bankruptcy Court File, various dates).

⁴ Item 7 (Schedule I: Your Income, dated August 19, 2015).

⁵ Item 7 (Schedule J: Your Expenses).

⁶ Item 7 (Trustee's Final Report and Account, dated June 5, 2017).

⁷ Item 7, *supra* note 3.

⁸ Item 4, *supra* note 1.

¶ 1.i., credit card for \$3,808); (SOR ¶ 1.j., line of credit for \$2,489); (SOR ¶ 1.k., credit card for \$1,056); (SOR ¶ 1.l., medical account for \$67); (SOR ¶ 1.m., cellular phone account for \$604); (SOR ¶ 1.o., federal taxes for \$16,373 of which there was a partial payment of \$2,261.64 as part of the bankruptcy); and (SOR ¶ 1.p., state taxes for \$1,256 that was actually paid off as part of the bankruptcy).⁹

Applicant claimed that his financial situation was “much better,” and while he has not made any efforts to resolve his delinquent accounts, he is purportedly able to pay his current bills.¹⁰ He denied having received any financial counseling or debt consolidation services, but did indicate that he was looking into hiring a credit management company to assist him in paying his debts. However, as of January 2018, he had not yet done so.¹¹ 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. In January 2018, the OPM investigator requested documentation associated with Applicant’s accounts, and in October 2018, Department Counsel noted that Applicant still had not provided any “documentary evidence proving that he has paid, is on a current repayment plan for, has settled, or otherwise resolved any of his delinquent or charged off accounts.” That status remains unchanged. Other than his general oral statements, 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.”¹² 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.”¹³

⁹ Item 5, *supra* note 1, at 6-10, 18; Item 6, *supra* note 1, at 2-3, 5; Item 4, *supra* note 1, at 6-11.

¹⁰ Item 4, *supra* note 1, at 9-10.

¹¹ Item 4, *supra* note 1, at 10. 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)).

¹² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹³ 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 guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

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

In the decision-making process, facts must be established by "substantial evidence."¹⁴ 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.¹⁵

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."¹⁶

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."¹⁷ Thus, nothing in this

¹⁴ "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).

¹⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ See Exec. Or. 10865 § 7.

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

Analysis

Guideline F, Financial Considerations

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

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; and

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

In addition to his Chapter 13 bankruptcy, the SOR identified 15 delinquent accounts, totaling approximately \$173,797, which had been placed for collection or charged off. Other than the now-cancelled bankruptcy effort, 14 of those delinquent accounts remain unresolved, with Applicant making no effort to resolve them, despite being fully employed since June 2013. His frivolous or irresponsible spending resulted in making an unsecured \$6,850 loan to a girlfriend and leasing a 2014 luxury vehicle for \$599 per month. At the time he filed for bankruptcy, more in an effort to save his residence from foreclosure than to pay his debts, Applicant had a monthly remainder of \$565 available for saving or spending, yet he ignored delinquent debts of \$67 and \$604. He claimed having an inability to meet his financial obligations over a period of years, and it appears that his avoidance of his financial obligations is associated with somewhat limited funds, irresponsible spending, and an unwillingness to satisfy his debts. AG ¶¶ 19(a), 19(b), 19(c), 19(e), and 19(f) 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;¹⁸

(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;¹⁹

¹⁸ 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)).

¹⁹ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

As to Applicant's state tax debt, which was satisfied under the bankruptcy, AG ¶ 20(g) applies. AG ¶ 20(b) minimally applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties 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 (October 2012 until June 2013), and insufficient funds to maintain his financial responsibilities. However, during his periods of unemployment, Applicant still had income from other sources. There is no documentation to reflect that Applicant made any efforts, much less "good-faith" efforts, before or after he was interviewed by OPM; after the bankruptcy was dismissed in April 2017; before or after the SOR was issued in August 2018; or even after he was sent the FORM in October 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.²⁰

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.²¹ In this instance, to date, with the limited exception of the trustee's payments regarding the state taxes and a portion of his federal tax debts, 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.

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)).

²⁰ See ISCR Case No. 12-01335 at 5 (App. Bd. Dec. 29, 2017).

²¹ 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).

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; (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.²²

There is very little evidence mitigating Applicant's conduct. Applicant is a 41-year-old employee of a defense contractor, serving as a senior administrative logistics analyst with his current employer since October 2015. He served in an enlisted capacity with the U.S. Navy from March 1996 until he was honorably discharged in January 2007. He was granted a top secret clearance in 2008. Because of a layoff, he was unemployed from October 2012 until June 2013. After filing for bankruptcy under Chapter 13 in August 2015, the bankruptcy trustee paid off Applicant's state tax debt and a portion of his federal tax debt.

The disqualifying evidence under the whole-person concept is more substantial. Applicant had 15 delinquent accounts that had been placed for collection or charged off,

²² 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).

totaling \$173,797. In an apparent tactical effort to save his residence from foreclosure, Applicant filed for bankruptcy under Chapter 13, but once the fear of foreclosure disappeared, he cancelled the bankruptcy in April 2017. Since the bankruptcy was dismissed nearly two years ago, Applicant has made no efforts to resolve his delinquent debts. 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:²³

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 extremely poor, if not non-existent, track record of debt reduction and elimination efforts, seemingly avoiding nearly 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

²³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraphs 1.a. through 1.m.:	Against Applicant
Subparagraphs 1.n. and 1.p.:	For Applicant
Subparagraph 1.o.:	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