



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



In the matter of:)
)
 ---) ISCR Case No. 18-03000
)
 Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: *Pro se*

05/03/2019

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 July 12, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On January 9, 2019, 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.

In a sworn statement, dated February 11, 2019, 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 March 7, 2019, and he was afforded an opportunity 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 Adjudicative Guidelines applicable to his case. Applicant received the FORM on March 13, 2019. Applicant responded to the FORM by timely submitting a statement and associated documents, all of which were accepted without objection. The case was assigned to me on April 26, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with comments, both of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. and 1.b.). Applicant's admissions and comments 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 30-year-old employee of a defense contractor. He has been serving as a manufacturing engineer with his current employer since May 2015. He previously held a position as an entry level process engineer, although he erroneously described his title in his e-QIP as a senior process engineer, with another federal contractor from September 2011 until May 2015. Applicant received a bachelor's degree in August 2011. He has never served with the U.S. military. He has never held a security clearance. Applicant was married in February 2017. He has no children.

Financial Considerations¹

Applicant was a full-time student at a university from June 2006 until August 2008, and from August 2008 until May 2011, he was both a student and a part-time employee of the university athletic department. In May 2011, expecting to graduate, he quit his student job, but it was necessary for him to complete one summer-school course before his actual graduation in August 2011. He was unemployed from May 2011 until he

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (e-QIP, dated July 12, 2017); Item 4 (Enhanced Subject Interview, dated August 9, 2018); Item 6 (Combined Experian and TransUnion Credit Report, dated July 29, 2017); Item 5 (Equifax Credit Report, dated December 19, 2018); Item 1 (Applicant's Answer to SOR, dated February 11, 2019); Applicant's Response to the FORM, undated; TransUnion Credit Report, dated April 4, 2019, attached to Applicant's Response to the FORM; and Equifax Credit Report, dated April 5, 2019, attached to Applicant's Response to the FORM.

obtained his first post-graduation job in September 2011.² To fund his education during the first two years of school, Applicant had obtained student loans, totaling approximately \$35,000, co-signed by his grandmother. The deferment period on repayment of the student loans expired. Applicant claimed that he called his student-loan lenders, and while his federal lenders were able to reduce his monthly payments on the front end, by adding increased payments eventually when he was expected to be making a better income, the bank lender for the other student loans offered him no relief except by telling him to “pay it as he could.” With insufficient funds to address all of his financial obligations, Applicant made a decision to pay his federal student loans and an automobile loan, and not address the private lenders. Those loans went into a default status.³

Once Applicant was making a salary sufficient for him to start addressing his defaulted student loans, they had been placed for collection; charged off; sold to other collection agents or debt purchasers; and the statute of limitations had expired. There is no evidence to indicate that the lender issued Applicant a Form 1099-C, *Cancellation of Debt*, to forgive the debt. Applicant stated that he might have been more willing to resolve the loans had his grandmother still been alive so his delinquency would not impact her financially, but she was now deceased.⁴ In his e-QIP, Applicant stated:⁵

It has been too long that they cannot come after me in a legal matter to pay back the debt and also has been sold to a secondary company so it is no longer considered a legal debt that I owe other than for my credit score. I have the money in savings so I could pay off the remaining debt but have lived with the credit hit this long that I have decided to let this pass without paying the debt collectors.

In his Answer to the SOR, Applicant stated: “I am not proud of the fact that I have unpaid debts, but I believe I made the best choice for my future at the time. Once the private loans were charged off, they hold a statute of limitations for legal action that has since expired.”⁶ He added: If I need to pay off the debt in order to move forward with the clearance process, I am willing and able to do that.”⁷

Although Applicant claims to have approximately \$80,000 in private stock and mutual fund assets as well as approximately \$100,000 in real property equity, he claimed that those funds were either his wife’s or generated by his wife’s inheritance. Applicant stated that the “money is available if there was ever a financial hardship and could be

² Item 3, *supra* note 1, at 14-15; Item 4, *supra* note 1, at 4.

³ Item 3, *supra* note 1, at 14-15; Item 4, *supra* note 1, at 4; Item 1, *supra* note 1.

⁴ Item 4, *supra* note 1, at 4.

⁵ Item 3, *supra* note 1, at 36.

⁶ Item 1, *supra* note 1.

⁷ Item 1, *supra* note 1.

used to pay a bill or some other item.”⁸ He offered no documentation to support his contention as to the source of his available financial assets.

The SOR alleges only two delinquent accounts, the two student loans referred to above. One was charged off in July 2012, in the amount of \$17,459, and the other was charged off in July 2012, in the amount of \$17,224.

It is not known what Applicant’s current financial resources may be because he did not report his current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. However, according to the credit reporting agencies, as of March 2019, he had credit scores of between 800 and 814, evidence of excellent credit.⁹ There is no evidence of financial counseling or a budget. Nevertheless, in the absence of additional delinquent debts, it appears that Applicant is currently in a significantly better position financially than he had been several years ago.

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.”¹⁰ 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.”¹¹

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

⁸ Applicant’s Response to the FORM, *supra* note 1, at 1.

⁹ Applicant’s Response to the FORM, *supra* note 1, at 2; Credit Scores, various dates, attached to Applicant’s Response to the FORM.

¹⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”¹² 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.¹³

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.”¹⁴

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.”¹⁵ 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.

¹² “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).

¹³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁴ *Egan*, 484 U.S. at 531.

¹⁵ 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; and
- (c) a history of not meeting financial obligations.

While Applicant may have had financial difficulties when he was a recent graduate from college and a newly employed worker due to insufficient funds to maintain all of his accounts in a current status, time and improved finances eventually resulted in his resolution of most of his delinquent debts. His present situation is not caused by any inability to satisfy his remaining debts, but rather by his refusal to do so. Applicant has two delinquent student-loan accounts, totaling approximately \$35,000, placed for collection, and charged off in 2012. Although Applicant has sufficient funds to at least start resolving those debts, because they were charged off, sold to other collection agents or debt purchasers, and the statute of limitations had expired, he contends he is no longer responsible for them, and he has no intention to pay them off.¹⁶ He has not addressed

¹⁶ Applicant's credit reports indicate that his two debts are in charged-off status. Eventually the charged-off debts will be dropped from his credit report. "[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid,

either debt since 2012. He recently stated that if he needed to resolve the debts in order to obtain his security clearance, he would be willing and able to do so. AG ¶¶ 19(b) and 19(c) have been established, but no other disqualifying conditions apply.

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;¹⁷

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.¹⁸

a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off. Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.

¹⁷ 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. Sept. 13, 2016)).

¹⁸ 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)).

None of the mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties, or refusal to resolve his delinquent student loans, although he has had the financial ability to do so for several years, make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for the past seven years. While the debts may have originally become delinquent when Applicant was unable to continue making timely payments, his financial circumstances eventually improved significantly, and at that point he should have started addressing them with the eventual goal of resolving them. Applicant preferred to address other debts, which is an acceptable factor, but in doing so, he clearly and unequivocally declared that he had no intention to make any efforts to resolve these two student loans, offering a variety of justifications for his inactions. Inaction or refusal to take timely and appropriate action with respect to student loans indicates irresponsibility toward financial and social obligations in general. When an individual with otherwise good credit, such as Applicant, fails to make student loan payments, his actions can be interpreted as a lack of respect for financial obligations.

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.

In this instance, to date, there is substantial evidence that no good-faith corrective actions have been taken by Applicant, either after he completed his e-QIP in July 2017, after his interview in August 2018, or after he received the FORM in March 2019. There is circumstantial evidence to conclude that, with the exception of these two delinquent student-loan debts, Applicant's finances are under control, and there is direct evidence that he has sufficient assets to at least commence making some good-faith efforts to resolve those debts. Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment.¹⁹

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

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

(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.²⁰

There is some evidence in favor of mitigating Applicant's finances and conduct. Applicant. He is a 30-year-old employee of a defense contractor, serving as a manufacturing engineer with his current employer since May 2015. He previously held a position as an entry level process engineer with another federal contractor from September 2011 until May 2015. Although he financially struggled upon receiving his bachelor's degree, and for some time while working with his first employer, time and improved finances enabled him to eventually resolve most of his old delinquent debts, amass a significant amount of financial assets, and achieve credit scores of 800 and above.

The disqualifying evidence under the whole-person concept is simply more substantial. His present situation is not caused by any inability to satisfy his remaining debts, but rather by his refusal to do so. Applicant has two delinquent student-loan accounts, totaling approximately \$35,000, placed for collection, and charged off in 2012. Although he has sufficient funds to at least start resolving those debts, because they were charged off, sold to other collection agents or debt purchasers, and the statute of limitations had expired, he contends he is no longer responsible for them, and he has repeatedly stated that he has no intention to pay them off. He has not addressed either debt since 2012. Now finally concerned about a security clearance, Applicant recently stated that if he needed to resolve the debts in order to obtain his security clearance, he would be willing and able to do so. While seemingly willing, to date, Applicant has not done so. It is not known what Applicant's current financial resources may be, but, in the absence of additional delinquent debts, it appears that he is currently in a significantly better position financially than he had been. His financial situation seems to be under control.

²⁰ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

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

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

While Applicant previously demonstrated a good track record of debt reduction and elimination efforts, resolving his earlier non-SOR debts years ago, since improving his financial situation to the point where his credit scores are now 800 and above, Applicant has repeatedly refused to make any good-faith efforts to resolve his two delinquent student loans, totaling approximately \$35,000. His current track record is poor. 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. and 1.b:	Against Applicant

²¹ 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 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