



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 ---) ISCR Case No. 19-00328
)
 Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

10/24/2019

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 April 19, 2013, and again on June 5, 2018, Applicant applied for a security clearance and submitted Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On March 19, 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* (AG) (December 10, 2016), 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 an unsworn and undated statement, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. (Item 2) On July 22, 2019, pursuant to ¶ E.3.1.13 of the Directive, the Government amended the SOR by adding an additional allegation, designated as SOR ¶ 1.h. 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 July 23, 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 August 15, 2019. His response was due on September 14, 2019. Applicant chose not to respond to the FORM, for as of October 16, 2019, no response had been received. The case was assigned to me on October 16, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with brief comments, all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. through 1.g.). He failed to answer the newly added allegation, and his silence is considered a denial. 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 40-year-old employee of a defense contractor. He has been serving as an aircraft mechanic with his current employer since September 2014. He previously served in similar positions with other employers within the United States and overseas, including Iraq and Afghanistan. A 1997 high school graduate, Applicant received a technical certification in airframe and propulsion in 1999. He has never served with the U.S. military. He was determined eligible for a position of public trust in 2009 and 2012, and was granted a secret clearance in 2013. He was married in 2004. He has two children, born in 2002 and 2012.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 8 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 1, 2018); Item 9 (Equifax Credit Report, dated January 11, 2019); Item 6 (Enhanced Subject Interview, dated September 19, 2018); and Item 2 (Applicant's Answer to SOR, undated).

On January 20, 2015, Applicant was interviewed by an investigator with the U.S. Department of Homeland Security (DHS). At that time, he was questioned about certain

delinquent accounts, and he claimed that some of the debts listed in an earlier credit report were inaccurate, and that his account issues had been resolved. (Item 5) With respect to his most recent financial issues, Applicant attributed his financial difficulties to his mother's 2016 hospitalization and death, especially when Medicare refused to cover some of her expenses; his daughter's back surgery, leaving a bill of \$300; a September 2017 hurricane; and his wife's loss of employment due to the hurricane. (Item 6, at 5-6; Item 4, at 45) In order to resolve his mother's expenses, Applicant prioritized his bills. As a result, some of his accounts became delinquent. In December 2016 or January 2017, in an effort to address his delinquent accounts, Applicant obtained a consolidation loan from a particular bank. He contended that certain identified accounts were resolved by the funds he obtained by the loan. (Item 6, at 5) A review of Applicant's 2018 credit report reveals three separate accounts from that particular bank, but the one identified during his interview with an investigator from the U.S. Office of Personnel Management (OPM) reports a \$17,340 high credit with a zero balance. The account was 120 days past due, and closed. (Item 8, at 5) In his Answer to the SOR, Applicant identified a different account as the source of the funds. According to his 2018 credit report, that account has a \$16,940 high credit and an unpaid balance of \$17,386, of which \$501 was past due. None of the accounts are reported in Applicant's 2019 credit report.

The SOR, as amended, alleged eight delinquent accounts totaling approximately \$53,821. Five of the eight accounts are ones that Applicant contended he had resolved. The SOR allegations are set forth below:

SOR ¶ 1.a.: This is a student loan with an unpaid balance of \$15,224 that was transferred to another lender and assigned to the government. (Item 9, at 2-3; Item 8, at 5, 7, and 10) During his September 2018 OPM interview, Applicant stated that he would contact the U.S. Department of Education to determine who is servicing the loan in order to establish repayment arrangements. (Item 6, at 6) In his Answer to the SOR, he stated that he was "currently verifying the current lender." (Item 2) Over one year has passed since Applicant made his statement to the OPM investigator, and he has not submitted any documents to reflect any actions that he may have taken over that period to resolve the account. In the absence of such documentation, I conclude that the account is not yet in the process of being resolved.

SOR ¶¶ 1.b. through 1.f.: These are a variety of credit cards, charge accounts, and unspecified types of accounts with unpaid or charged-off balances of \$13,790, \$2,416, \$1,750, \$833, and \$499. (Item 8, at 8-9; Item 9, at 2-3; Item 6, at 2) Applicant contended that these five accounts were paid and resolved by the funds in his consolidation loan. (Item 6, at 5-6; Item 2) He failed to submit any documentation such as statements from the creditors agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to indicate that any payments had been made or the accounts resolved. In the absence of such documentation, I conclude that the accounts are not yet in the process of being resolved.

SOR ¶ 1.g.: This is an unspecified type of bank account with an unpaid balance of \$2,293 that was charged off. (Item 8, at 9) Applicant admitted that he is indebted to the

creditor, but contended that he has been making agreed-upon monthly \$83 payments. (Item 2) He did not specify when those payments commenced, and he failed to submit any documentation, such as a statement from the creditor agreeing to a repayment plan, cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he has an agreement and that he is making any payments to the creditor. In the absence of such documentation, I conclude that the account is not yet in the process of being resolved.

SOR ¶ 1.h.: This is an automobile loan that was opened in December 2014 with a \$27,842 high credit and an unpaid balance of \$17,016 of which \$988 was past due. Monthly payments were \$673, and the account started becoming delinquent in June 2018. (Item 9, at 1) Applicant did not address this debt. The account has not been resolved.

In January 2015, Applicant presented a financial disclosure report to DHS. In it, he estimated assets of \$197,000, including one residence and four automobiles, and estimated \$201,000 in liabilities. His total annual income was \$65,000. He had \$1,759 in “selected monthly expenses.” (Item 7) 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. There is no evidence of a budget. There is no evidence of financial counseling. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been.

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

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

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.” (*Egan*, 484 U.S. at 531)

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.” (See Exec. Or. 10865 § 7) 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 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.

Applicant had eight delinquent accounts totaling approximately \$53,821. He admitted that seven of those accounts were his responsibility, but failed to address the eighth account. He claimed that he had insufficient funds to maintain his accounts in current status. AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence that Applicant has been unwilling to satisfy his debts regardless of an ability to do so, and AG ¶ 19(b) has not 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;
- (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.

AG ¶ 20(b) minimally applies, but none of the other conditions apply. 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)). The nature, frequency, and recency of Applicant’s continuing financial difficulties, and his failure to voluntarily and timely resolve his delinquent accounts for several years, and in fact, incur a significant additional monthly obligation make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for several years. Applicant has attempted to attribute his financial problems to his separation and divorce and having insufficient funds. He did not specify how those issues impacted his finances. Furthermore, he failed to explain why, during a period of claimed insufficient funds, he purchased a third vehicle to go along with his other two cars and one motorcycle.

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. (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)). Applicant completed his e-QIP in April 2018; underwent his OPM interview in June 2018; and the SOR was issued in May 2019. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. With one exception, Applicant did not contact his creditors either to seek repayment agreements, or to actually start making payments, until July 2019 – nearly two months after the SOR was issued. His proven history of making payments reflects very modest solitary payments several creditors, as well as ignoring the remaining creditors.

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.

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)) In this instance, there is evidence, supported by documentation, that Applicant took some corrective actions with respect to some of his delinquent debts well after he was interviewed by the OPM investigator. There are also substantial unverified comments by Applicant that he resolved or started to resolve some delinquent accounts, but he offered no documentation to support his contentions. His contentions regarding the status of some accounts, and his unverified comments claiming that he had taken certain actions, without documents, to support his claims, are insufficient to reflect good-faith actions. 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).

There is no evidence of financial counseling or a budget. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been. Applicant’s actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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. 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 financial concerns. Applicant is a 41-year-old employee of a defense contractor. He has been serving as an associate systems administrator with his current employer since September 2016. He is a 1996 high school graduate. Applicant enlisted in the U.S. Army in November 1996, and he remained on active duty, including service in both Iraq and Afghanistan, until he was honorably retired in December 2016. He was treated for PTSD in 2014. He was granted a secret clearance in 1996, and he reported that he was granted access to SCI in 2012.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant had a number of delinquent accounts that were ignored by him until at least July 2019 two months after the SOR was issued, and nearly a year after he was interviewed by the OPM investigator. Rather than starting on resolving his delinquent debts, in January 2019, he purchased his fourth vehicle, including three other cars and one motorcycle. Applicant claimed that he had paid off some of the creditors, or entered into repayment agreements with other creditors. However, with rare exceptions, because of his failure to submit documentation associated with his delinquent accounts, such as receipts, cancelled checks, or bank account transactions, to support his contentions that some accounts have been settled, paid off, or otherwise resolved; or that agreed settlements have actually proceeded to resolution; or that payments have actually been made to his creditors, it is difficult to assess the true situation, for we have mostly Applicant's unverified comments claiming that he had taken certain actions.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

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 contended that he took certain actions with respect to his delinquent debts, there is very little documentary evidence to indicate that many of those accounts have been addressed. He did submit documentation that he had made his first rather modest payments to some creditors in July 2019. Applicant's current track record is poor at best. 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.l.:	Against Applicant
Subparagraph 1.m.:	For 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