



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



In the matter of:)
)
 ---) ISCR Case No. 19-01082
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

11/15/2019

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On July 11, 2017, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On December 17, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He responded to those interrogatories on March 13, 2019. On May 9, 2019, the DOD 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 Guidelines F (Financial Considerations) and E (Personal Conduct), 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 July 15, 2019, Applicant responded to the SOR, and he 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 August 16, 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 27, 2019. His response was due on September 26, 2019. Applicant did not submit any response to the FORM. The case was assigned to me on October 28, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted, without comments, all of the factual allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.c.), and personal conduct (SOR ¶ 1.a.). 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:

Background

Applicant is a 30-year-old employee of a defense contractor. He has been serving as a security guard with his current employer since June 2017. He is also a volunteer firefighter captain. He is a 2008 high school graduate, and received an associate's degree in 2010. He was commissioned into either the Army National Guard (ANG) or the Active Army Reserve, and he served from October 2010 until September 2014 when he was honorably discharged as a second lieutenant. (Item 2, at 14-17; Item 3, at 4) He was granted a secret clearance on an unspecified date. He was married in 2014, and divorced in 2016. He has no children.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 11, 2017); Item 6 (Equifax Credit Report, dated December 4, 2018); Item 3 (Enhanced Subject Interview, dated May 2, 2018); and Item 1 (Applicant's Answer to SOR, dated July 15, 2019).

Applicant reported that he had been unemployed following his discharge from military service, and that period of unemployment extended from October 2010 until September 2014. He was also unemployed from April 2017 until June 2017. During both

periods of unemployment, he was supported by his parents, and he spent his time searching for a job. (Item 3, at 3-4) Several accounts became delinquent. During his interview with an investigator from the U.S. Office of Personnel Management (OPM) in May 2018, Applicant was questioned about his finances, and it was only after he was confronted with negative financial information from his credit report that he did acknowledge having delinquent accounts. He attributed his financial difficulties to his unemployment. He stated that he would obtain a copy of his credit report and immediately contact his creditors to bring all of his delinquent accounts into a current status. (Item 3, at 5-6)

The SOR alleged three delinquent accounts totaling approximately \$22,572. Those three accounts were an unsecured consumer loan with an unpaid balance of \$21,451 for which \$21,811 was charged off in February 2013 (Item 5, at 4; Item 6, at 1; and Item 3, at 6) (SOR ¶ 1.a.); a medical account with an unpaid balance of \$442 (Item 5, at 11; Item 6, at 2; and Item 3, at 5) (SOR ¶ 1.b.); and a medical account with an unpaid balance of \$679 (Item 5, at 10; and Item 3, at 6) (SOR ¶ 1.c.). Although Applicant stated his intention to resolve his delinquent accounts in May 2018 – over one year ago – he failed to submit documentation such as correspondence with his creditors, cancelled checks or money orders, or receipts to reflect that he had either contacted his creditors, or made payments to them in an effort to resolve his delinquent accounts. Instead, Applicant submitted selected screen shots of what he characterized as his credit report on March 12, 2019, reflecting a credit score of 531; tax-reported income of \$31,000; and zero total debt. (Item 4 – attachments to response to interrogatories) His submission did not address the specific accounts alleged in the SOR. Furthermore, Applicant did not claim that he had paid off the accounts in question. In the absence of more specific documentation associated with the specific accounts alleged in the SOR, I conclude that the accounts are not yet in the process of being resolved.

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.

Personal Conduct

On July 11, 2017, when Applicant completed his SF 86, he responded to certain questions pertaining to his financial record found in Section 26. Some of those questions asked if, in the past seven years, he had defaulted on any type of loan; had bills or debts turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; and been over 120 days delinquent on any debt not previously entered; as well as if he is currently over 120 days delinquent on any debt? Applicant answered "no" to all of those questions, and certified that his responses were "true, complete, and correct" to the best of his knowledge and belief. (Item 2, at 35-36) In fact, his answers were incorrect, for Applicant actually had delinquent accounts

that clearly came within the scope of the questions asked. In his Answer to the SOR, Applicant admitted that he had deliberately falsified the material facts in his responses to the SF 86 inquiries. (Item 1, at 2)

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; and

(c) a history of not meeting financial obligations.

The SOR alleged three delinquent accounts totaling approximately \$22,572. Applicant admitted that the debts were his responsibility, and that as of the date the SOR was issued, the accounts were still delinquent. AG ¶¶ 19(a) 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;

(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, cause me to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for several years. Applicant attributed his financial problems to his unemployment, but his largest account became delinquent and was charged off over a year before his October 2014 unemployment.

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 SF 86 in July 2017; underwent his OPM interview in May 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. Applicant admittedly did not contact his creditors either to seek repayment agreements, or to actually start making payments, before his OPM interview. Although he claimed that his accounts had zero balances when he submitted his responses to the interrogatories in March 2019, in his Answer to the SOR, he admitted that the accounts were still delinquent. He has a proven history of making no efforts to resolve his delinquent accounts.

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 no evidence, supported by documentation, that Applicant took any corrective actions with respect to his delinquent debts. There is an unverified comment by Applicant that he currently has no delinquent accounts, but he offered no substantial documentation to support his contentions or that he had taken any good-faith efforts to resolve his delinquent debts. 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).

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes a condition that could raise security concerns under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

As noted above, in July 2017, when Applicant completed his SF 86, he responded to certain questions pertaining to his finances found in Section 26. Some of those questions asked about the past and current status of his financial accounts. Applicant answered "no" to all of those questions, and certified that his responses were "true, complete, and correct" to the best of his knowledge and belief. In fact, his answers were incorrect, for Applicant actually had delinquent accounts that clearly came within the

scope of the questions asked. In his Answer to the SOR, Applicant admitted that he had deliberately falsified the material facts in his responses to the SF 86 inquiries. AG ¶ 16(a) has been established.

The guideline also includes examples of conditions under AG ¶ 17 that could mitigate security concerns arising from personal conduct. They include:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

Neither of the mitigating conditions apply. Applicant's behavior reflects a general lack of candor that is not minor or infrequent, and it did not occur under unique circumstances. Furthermore, Applicant has not taken any positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. Applicant's actions under the circumstances continue to cast doubt on his current reliability, trustworthiness, and good judgment.

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 30-year-old employee of a defense contractor. He has been serving as a security guard with his current employer since June 2017. He is also a volunteer firefighter captain. He is a 2008 high school graduate, and received an associate's degree in 2010. He was commissioned into either the ANG or the Active Army Reserve, and he served from October 2010 until September 2014 when he was honorably discharged as a second lieutenant. He was granted a secret clearance on an unspecified date.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant admittedly deliberately falsified material facts on his SF 86. He had three delinquent accounts that were essentially ignored by him until at least after he was interviewed by the OPM investigator, and probably remained ignored until after he answered the SOR. Although Applicant claims that he has zero debts, 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 accounts have been resolved, it is difficult to assess the true situation, for we have mostly Applicant's unverified comments regarding his debts.

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 now has zero debts, he never claimed to have paid off his SOR-related creditors. There is no documentary evidence to indicate that his accounts have been addressed. 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, AG ¶¶ 2(d)(1) through 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.c.: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a.: 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