



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 --- ) ISCR Case No. 19-01339  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

10/24/2019

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**Decision**

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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 May 1, 2018, Applicant applied for a security clearance and submitted a Questionnaire For National Security Positions (SF 86). On May 31, 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 a sworn statement, dated June 7, 2019, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. (Item 1) 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 10, 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. It is unclear when Applicant received the FORM as there is no receipt in the case file. After receiving an extension from DOHA, his response was due on September 16, 2019. Applicant chose not to respond to the FORM, for as of October 22, 2019, no response had been received. The case was assigned to me on October 22, 2019.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. through 1.f.). 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 31-year-old employee of a defense contractor. He has been serving as a technical service engineer with his current employer since October 2012. He enlisted in the Army National Guard, and served from February 2008 until February 2015, when he was honorably discharged. He is a 2006 high school graduate. He was granted a secret clearance in 2008. He was married in 2013, and divorced in 2016. He has one child, born in 2012.

### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 25, 2018); Item 5 (Equifax Credit Report, dated April 2, 2019); Item 6 (Equifax Credit Report, dated July 8, 2019); Item 3 (Enhanced Subject Interview, dated July 9, 2018); Item 2 (SF 86, dated May 1, 2018); and Item 1 (Applicant's Answer to SOR, dated June 7, 2019).

In his SF 86, Applicant listed several delinquent accounts, and he attributed his financial difficulties to his divorce; his ex-wife's failure to make car payments; and child support payments. (Item 2, at 33-37) On July 31, 2018, he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). At that time, he explained that because of the divorce and a relocation to an out-of-state location for a

new job, he became short on funds and was unable to maintain his accounts in a current status. He contended that he had attempted to pay his creditors a little at a time and that he was saving money to enable him to pay off his debts. In doing so, he altered his spending habits, and no longer uses credit cards. (Item 3, at 4) He was questioned about his delinquent accounts, and he acknowledged that two vehicles were repossessed because he was not making any payments; and that he had made no payments on two other accounts. He also claimed that he had made a couple payments for one account, and that he was making monthly payments on another account. (Item 3, at 3-4) However, Applicant failed to submit any documents 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 to any creditor.

The SOR alleged six delinquent accounts totaling approximately \$38,104. Those allegations are set forth below:

SOR ¶ 1.a.: This is an automobile loan on a 2016 vehicle with an unpaid balance of \$12,930 that was charged off after the vehicle was repossessed. (Item 4, at 11; Item 5, at 2) Applicant acknowledged that he has not been making any payments. (Item 3, at 3; Item 1) The account is not yet in the process of being resolved.

SOR ¶ 1.b.: This is a credit-card account with an unpaid balance of \$12,582. (Item 4, at 12; Item 5, at 12; Item 6, at 1-2) Applicant's July 2019 credit report notes that \$13,982 was charged off. (Item 6, at 2) Applicant contended that he was making monthly payments to the creditor, but he did not state the amount of the payments, or when those payments commenced. However, Applicant's July 2019 credit report notes that a \$50 payment was received in June 2019, and that the current balance of the account was \$12,432. (Item 6, at 1-2) The account is in the process of being resolved.

SOR ¶ 1.c.: This is a credit-card account with an unpaid balance of \$6,475 that was charged off. (Item 4, at 11; Item 5, at 2; Item 3, at 4) Applicant contended that he "made a couple payments" to the creditor, but he did not state the amount of the payments, or when those payments commenced. He failed to submit any documentation, such as cancelled checks, copies of money orders, a bank register, or receipts, to support his contention that he has made 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.d.: This is a joint automobile loan on a 2012 vehicle with an unpaid balance of \$4,367 that was allegedly charged off after the vehicle was repossessed. (Item 4, at 12; Item 5, at 2; Item 6, at 3-4) Applicant's July 2019 credit report notes that \$6,681 was actually charged off. (Item 6, at 4) Applicant acknowledged that he has not been making any payments. (Item 3, at 3; Item 1) The account is not yet in the process of being resolved.

SOR ¶ 1.e.: This is a credit-card account with an unpaid balance of \$1,414 that was charged off and sold to a debt purchaser. (Item 4, at 12; Item 5, at 2; Item 6, at 2, 5)

Applicant acknowledged that he has not been making any payments. (Item 3, at 3; Item 1) The account is not yet in the process of being resolved.

SOR ¶ 1.f.: This is credit-card account with an unpaid balance of \$336 that was charged off. (Item 4, at 11; Item 5, at 2; Item 6, at 2) Applicant acknowledged that he has not been making any payments. (Item 3, at 4; Item 1) The account is 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.

### **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 (4<sup>th</sup> 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 six delinquent accounts totaling approximately \$38,104. Two vehicles were repossessed because he was not making any payments, and he, admittedly, had made no payments on two other accounts, claiming 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, 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 attributed his financial problems to his divorce; the maintenance of two separate homes; his ex-wife’s failure to make car payments; and child support payments. He did not specify how those issues impacted his finances.

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 May 2018; underwent his OPM interview in July 2018; the SOR was issued in May 2019; and he received the FORM sometime in July or August 2019. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. While it appears that Applicant made at least one \$50 payment to one of his creditors in June 2019 – after the SOR was issued – and offered an unverified comment that he had made a couple of unspecified payments on another account, he essentially failed to address his other 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.

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, with one exception, there is no evidence supported by documentation that Applicant has taken any corrective actions with respect to his delinquent debts. There are 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 *a/so* 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 31-year-old employee of a defense contractor. He has been serving as a technical service engineer with his current employer since October 2012. He enlisted in the Army National Guard, and served from February 2008 until February 2015, when he was honorably discharged. He is a 2006 high school graduate. He was granted a secret clearance in 2008.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant had a number of delinquent accounts totaling approximately \$38,104. Two vehicles were repossessed, and four other accounts became delinquent, and were essentially ignored by him until after the SOR was issued. Applicant claimed that he had started addressing two of the accounts, but acknowledged that he had made no payments on the other four accounts. However, 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 payments have actually been made to two of his creditors, it is difficult to assess the true situation, for we have only 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 no documentary evidence to indicate that any of those 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, ¶¶ 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
Subparas 1.a., and 1.c.through 1.f.:	Against Applicant
Subparagraph 1.b.:	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.

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ROBERT ROBINSON GALES  
Administrative Judge