



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



In the matter of:)
)
 ---) ISCR Case No. 19-01499
)
 Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: *Pro se*

12/03/2019

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 August 2, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On June 7, 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 July 16, 2019, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. (Item 2) 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 September 5, 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 September 18, 2019. His response was due on October 18, 2019. Applicant chose not to respond to the FORM, for as of November 27, 2019, no response had been received. The case was assigned to me on November 27, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with extensive comments, nearly all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.i., 1.k., 1.o., and 1.p.). As for the allegations he denied, he submitted documentation associated with those accounts identified. 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 32-year-old employee of a defense contractor. He has been serving as a mechanic with his current employer since March 2018. He previously served as a detention officer with the local sheriff's department from November 2016 until March 2018, and also held part-time positions with auto parts stores from August 2015 until November 2016. A 2006 high school graduate, Applicant attended a local community college as a part-time student for a little over one year, and received some credits, but no degree. He enlisted in the U.S. Marine Corps (USMC) in August 2006, and he served on active duty in the United States and Okinawa, Japan, until he was honorably and medically discharged as a sergeant (E-5), and awarded a 100 percent disability. He was granted a secret clearance on an unspecified date. He was married in 2009, separated in 2012, and divorced in 2013. He remarried in 2013, and separated in 2017. His present marital status is not reported. 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 September 25, 2018); Item 4 (Equifax Credit Report, dated April 29, 2019); Item 6 (Enhanced Subject Interview, dated January 15, 2019); Item 2 (Applicant's Answer to SOR, dated July 16, 2019); Item 2 (TransUnion Credit Report, dated July 1, 2019, attached to Applicant's Answer to the SOR Answer); and Item 2

(Equifax Credit Report, dated July 1, 2019, attached to Applicant's Answer to the SOR Answer).

Applicant attributed his financial problems to his two failed marriages and his disability. His first wife ran up his credit card balances while he was away at training. During his separation from his first wife, he was required to pay her \$985 in monthly alimony, and one-half of his basic housing allowance was directed to her. That situation continued for 13 months. As a corporal with the USMC, his income was depleted. When he remarried, he had to establish a new home with furniture and household items, and he needed a vehicle for his new wife to get to work. In September 2015, he was medically retired, and he found it hard to hold a steady job due to the injuries he had sustained while on active duty. Eventually, his wife lost her job, and with very little money left after his divorce, he and his new wife struggled financially for five years before finally separating. (Item 2, at 1-2; Item 6, at 17-18)

When Applicant completed his SF 86 in August 2018, he acknowledged having one delinquent automobile-loan account. (Item 3, at 40-42) In January 2019, during his interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant discussed that automobile-loan account as well as a number of additional delinquent accounts. He stated that his home was flooded by a category 4 hurricane in mid-September 2018, and he lost all of his bills and property, and/or he lost track of everything. He acknowledged that he now had a steady check coming in, and he intended to start calling his creditors at the beginning of February 2019 in an effort to work on payment plans or possibly eliminate some of the interest on his debts. His repayment plan was to address other debts first, and then start working on these smaller debts before attempting to resolve the larger ones. He claimed to have altered his actions by no longer using credit cards, and only purchasing items for which he has cash in hand. (Item 6, at 18)

The SOR alleged 18 delinquent accounts totaling approximately \$76,530, as set forth as follows: SOR ¶¶ 1.a. through 1.e., 1.h., 1.i., 1.k., and 1.p.: various accounts with past-due and unpaid balances of \$28,813, \$13,529, \$5,281, \$4,133, \$3,328, \$806, \$443, \$80, and \$12,101 that were charged off, that Applicant admits are delinquent; SOR ¶¶ 1.f. and 1.g.: two cellular telephone accounts with unpaid balances of \$2,826 and \$842, that Applicant admits are delinquent. (Item 4, at 1-33; Item 5, at 5-7; Item 2, at 1-2) There is SOR ¶ 1.q.: a credit-card account with a past-due balance of \$398 and an unpaid balance of \$2,745, that Applicant acknowledged that he owed, but when he obtained his July 2019 credit reports, the account, which became delinquent in 2013, appeared in the TransUnion credit report reflecting a zero balance, and it no longer appears in his Equifax credit report. (Item 5, at 8; Item 6, at 13; Item 2 (TransUnion Credit Report, at 14); Item 2 (Equifax Credit Report)) There is SOR ¶ 1.r.: a cellular telephone account with an unpaid balance of \$825 that was sold or transferred to a debt collector or purchaser, that Applicant acknowledged that he owed, but when he obtained his July 2019 credit reports, the account, which became delinquent in 2013, no longer appears in the 2019 TransUnion or Equifax credit reports. (Item 5, at 13; Item 6, at 13; Item 2 (TransUnion Credit Report); Item 2 (Equifax Credit Report))

In addition, there are SOR ¶¶ 1.j., and 1.l. through 1.o.: five medical debts with unpaid balances of \$244, \$48, \$30, \$30, and \$28. (Item 4, at 2-3; Item 5, at 13; Item 6, at 12-13; Item 2, at 1-2) Applicant denied owing four of the debts, claiming that he had already paid them off, but he admitted that one such account, with the \$28 balance, is delinquent, but which he claims was recently transferred to another collection agent, and would probably be removed from his credit report because of the small balance. (Item 6, at 2) Applicant was apparently confused, for he submitted documentation to indicate that on July 1, 2019, he paid off three accounts with the balances of \$48, \$30, and \$28. (Item 2 (Receipt, dated July 1, 2019) The accounts with unpaid balances of \$244 and \$30 remain unpaid.

During periods of financial difficulties, although Applicant claimed that he had insufficient funds to maintain certain accounts in a current status, he managed to purchase jewelry for \$3,000; a boat for \$4,000; an automobile stereo set for about \$3,000; and a truck for \$36,000. (Item 6, at 12, 14-16)

Other than Applicant's unverified contentions regarding his expenses and his efforts to resolve certain delinquent accounts, there is no documentary evidence to support that Applicant made any efforts to address any of his delinquent accounts until July 1, 2019 – six months after the OPM interview and three weeks after the SOR was issued. With the exception of three relatively minor medical accounts (\$48, \$30, and \$28), Applicant's delinquent accounts have not been 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 (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;
- (c) a history of not meeting financial obligations.

The SOR alleged 18 delinquent accounts totaling approximately \$76,530. Applicant claimed that he had insufficient funds to maintain those accounts in a current status. As of the date the record closed, he had only resolved three minor medical debts with a total payment of only \$106, and a credit-card account has a zero balance. 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 has attempted to attribute his financial problems to his two failed marriages; his disability; and having insufficient funds. He also referred to a hurricane in mid-September 2018, after which he reportedly lost all of his bills and property, and/or he lost track of everything. But, it should be noted that even before the hurricane, Applicant made no efforts to address his delinquent debts. It is also troubling that although Applicant claimed that he had insufficient funds to maintain his accounts in a current status, he managed to spend significant sums on jewelry, a boat, an automobile stereo set, and a truck.

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 August 2018; underwent his OPM interview in January 2019; and the SOR was issued in June 2019. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. Applicant previously stated that he would start calling his creditors at the beginning of February 2019 in an effort to work on payment plans or possibly eliminate some of the interest on his debts. His repayment plan was to address other debts first, and then start working on his smaller debts before attempting to resolve the larger ones. Nevertheless, with delinquent debts totaling approximately \$76,530, throughout this entire process, Applicant failed to produce documentary evidence of any repayment plans, and he managed to resolve only three small debts totaling \$106 approximately three weeks after

the SOR was issued. One other account now has a zero balance, but Applicant is unable to express the reasons for the zero balance, and another account is no longer listed in his July 2019 credit report.

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. Sept. 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 minimal corrective actions with respect to three delinquent medical debts after the SOR was issued. There are also some unverified comments by Applicant that he intended to resolve his 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. Jun. 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 32-year-old employee of a defense contractor. He has been serving as a mechanic with his current employer since March 2018. He previously served as a detention officer with the local sheriff's department from November 2016 until March 2018, and also held part-time positions with auto parts stores from August 2015 until November 2016. A 2006 high school graduate, Applicant attended a local community college as a part-time student for a little over one year, and received some credits, but no degree. He enlisted in the USMC in August 2006, and he served on active duty until he was honorably and medically discharged as a sergeant (E-5), and awarded a 100 percent disability. He was granted a secret clearance on an unspecified date. He paid off three delinquent medical debts, totaling \$106, approximately three weeks after the SOR was issued.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant had 18 delinquent accounts totaling approximately \$76,530. Aside from the three minor medical debts that he paid, and one credit-card debt that now has a zero balance for an unspecified reason, all of his other delinquent debts remain unaddressed, despite Applicant's previously claimed intentions. Although Applicant claimed that he had insufficient funds to maintain his accounts in a current status, he managed to spend significant sums on jewelry, a boat, an automobile stereo set, and a truck.

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.

There is very little documentary evidence to indicate that most of Applicant’s delinquent accounts have been addressed. He finally paid off three accounts for \$106 after he received the SOR. 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.k., 1.n., 1.p., and 1.r.:	Against Applicant
Subparagraphs 1.l., 1.m., 1.o., and 1.q.:	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