



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 ---) ISCR Case No. 19-02145
)
 Applicant for Security Clearance)

Appearances

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

11/29/2019

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 June 27, 2018, Applicant applied for a security clearance and submitted a Questionnaire For National Security Positions (SF 86). On July 26, 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 August 29, 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 October 8, 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. He received the FORM on October 16, 2019. His response was due on November 15, 2019. Applicant timely submitted one e-mail statement which was accepted without objection. The case was assigned to me on November 26, 2019.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with brief comments, all but one of the factual allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.d., and 1.f. through 1.h.). Applicant's admissions and comments are incorporated herein as potential 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 35-year-old employee of a defense contractor. He has been serving as a photographer with his current employer since May 2018. He previously held the position of head photographer for a company in private industry from May 2005 until the business closed in May 2016. After a period of unemployment, he held the position of laborer for a private construction company from October 2016 until April 2018. His educational background was not revealed. He has never served with the U.S. military. He has never held a security clearance. He has never been married, and he has no children. (Item 2)

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 May 30, 2018); Item 6 (Equifax Credit Report, dated May 31, 2019); Item 4 (Enhanced Subject Interview, dated January 16, 2019); Item 2 (SF 86, dated May 4, 2018); and Item 2 (Applicant's Answer to SOR, dated August 19, 2019).

In his SF 86, Applicant reported "a discrepancy with [his] 2015 taxes" for which he may owe some money; delinquent student loans that he is working on to bring them

current; and three previously delinquent medical bills that he had already resolved. (Item 2, at 35-38) During an interview with an investigator from the U.S. Office of Personnel Management (OPM) in March 2019, he discussed several accounts that had been delinquent, but which he claimed he had resolved well before the interview. Applicant reported that he was unemployed from May 2016 until September 2016, and that during that period, he played video games, worked out at a gym, and spent time with friends and family. He did not mention if he looked for new employment. He was supported by his family. (Item 3, at 3) He acknowledged that his financial difficulties arose because he was unemployed; he had to be hospitalized on two occasions when he had no health insurance; and he did not have that much money. He also candidly said that when he was younger, he did not pay attention to what was going on, he was stupid and not paying attention to what was due, when it was due, or how much was due. He claimed that he had changed his ways, and was now paying more attention to his finances. (Item 3, at 7)

The SOR alleged eight delinquent accounts totaling approximately \$38,732, not including the unspecified amount of unpaid federal income taxes. Those allegations are set forth as follows: SOR ¶¶ 1.a. and 1.b.: two student loans with past-due and unpaid balances of \$16,750 and \$15,258 that Applicant admits are delinquent, but claims he is “working towards getting back on track and up to date.” (Item 6, at 2-3; Item 5, at 1-2; Item 4, at 5; Item 1, at 3); SOR ¶¶ 1.c., 1.f., and 1.g.: three medical debts with unpaid balances of \$4,045, \$259, and \$253 that Applicant admits are delinquent (Item 6, at 1-2; Item 5, at 2; Item 1, at 2); and SOR ¶ 1.d.: a credit-card account with an unpaid balance of \$1,383 that was charged off that Applicant admits is delinquent (Item 6, at 3; Item 5, at 2; Item 1, at 2). With regard to the delinquent student loans, Applicant failed to explain what his efforts were in working towards getting the loans back on track and up to date. In fact, with respect to all of the above listed delinquent debts, he failed to submit any documents such as his correspondence to his creditors, statements from the creditors, cancelled checks, copies of money orders, a bank register, or receipts, to reflect that he had made any efforts to resolve the accounts. In the absence of such explanations and documentation, I conclude that the accounts are not yet in the process of being resolved.

In addition, there is SOR ¶ 1.e.: an automobile loan with a high credit of \$6,399 and past-due and unpaid balance of \$784 that was charged off. (Item 6, at 3; Item 5, at 2; Item 4, at 5; Item 3, at 5). Applicant denied that, as of the date the SOR was issued, the account remained delinquent, claiming that he resolved the account in 2017, well before the SOR was issued. (Item 1, at 2; Item 3, at 5) While Applicant did not submit documentation to support his position, a review of one of his credit reports indicates that he actually did pay the charge off in September 2017 when he made a payment of \$790. (Item 6, at 3) The issue was somewhat confusing because the creditor listed in Applicant’s earlier credit reports is identified by a specific bank name, but the most recent credit report identified the creditor by its new name following a merger. The account has been resolved.

SOR ¶ 1.h. refers to Applicant being indebted to the federal government for an unspecified amount of unpaid income taxes for the tax year 2015. In his SF 86, Applicant stated that he “may owe some money for [his] 2015 taxes,” and that he would pay the

amount owed. (Item 2, at 36): In his Answer to the SOR, and again in his Answer to the FORM, Applicant claimed that the debt is being paid off, and that he made a \$500 payment. (Item 1, at 3) However, Applicant failed to report the amount initially or still owed to the Internal Revenue Service (IRS), and he failed to submit any documents to reflect an IRS acceptance of any installment agreement, or any payment(s) made. In the absence of such information and documentation, I conclude that the income tax debt 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 only Applicant's contention, unsupported by documentation, that he obtained financial counseling a decade before he was interviewed by the OPM investigator in March 2019. (Item 3, at 7) 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; and
- (f) failure to . . . pay annual Federal, state, or local income tax as required.

The SOR alleged eight delinquent accounts totaling approximately \$38,732, not including the unspecified amount of unpaid federal income taxes. He claimed that he had insufficient funds to maintain his accounts in current status. AG ¶¶ 19(a), 19(c), and 19(f) 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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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 student-loan accounts, as well as his other 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 a four-month period of unemployment in 2016; and to his hospitalization on two occasions when he did not have health insurance. He also referred to his failure pay attention to his finances. During his period of unemployment, Applicant reported that he did several social things, but did not mention if he looked for new employment. He was supported by his family. He claimed that he has changed his ways, and was now paying more attention to his finances. It remains unclear if he sought deferment or forbearance of his delinquent student loans.

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 necessary 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 June 2018; underwent his OPM interview in March 2019; the SOR was issued in July 2019; and he received the FORM in October 2019. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. While he contends he made a \$500 payment to the IRS, and he claims to have attempted to work towards resolving his delinquent student-loan accounts, he failed to submit any documents to support his contentions.

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, there is no evidence supported by documentation that Applicant has taken any corrective actions with respect to his delinquent student-loan debts, his federal income tax debt, or his other delinquent debts. There are brief unverified comments by Applicant that he took some initial steps to work towards resolving his delinquent student loans, and that he made a \$500 income tax payment to the IRS, but he offered no documentation to support his contentions. His contentions regarding the status of his 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 documented 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 35-year-old employee of a defense contractor. He has been serving as a photographer with his current employer since May 2018. He previously held the position of head photographer for a company in private industry from May 2005 until the business closed in May 2016. After a period of unemployment, he held the position of laborer for a private construction company from October 2016 until April 2018.

The disqualifying evidence under the whole-person concept is simply more substantial. Although the SOR alleged that Applicant had eight delinquent accounts totaling approximately \$38,732, not including the unspecified amount of unpaid federal income taxes, in reality, he had only seven delinquent accounts totaling approximately \$37,948, not including the unspecified amount of unpaid federal income taxes. He claimed that he had insufficient funds to maintain his accounts in a current status because he was unemployed for a four-month period, and was hospitalized on two occasions when he did not have health insurance. However, as he candidly noted, when he was younger, he did not pay attention to his finances, and he was unaware as to what was due, when it was due, or how much was due. Applicant's description of his activities during his period of unemployment is troublesome for he did not mention if he looked for new employment. It remains unclear if he sought deferment or forbearance of his delinquent student loans. It is difficult to assess Applicant's true financial 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 student-loan accounts and his federal income tax debt, with the exception of the one previously resolved delinquent automobile debt, there is no documentary evidence to indicate that any of his delinquent 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
Subparagraphs 1.a. through 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraphs 1.f. through 1.h.:	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