



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



In the matter of:)
)
 ---) ISCR Case No. 19-01503
)
 Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esquire, Department Counsel
For Applicant: *Pro se*

01/15/2020

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On April 9, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On May 24, 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.

On an unspecified date, with merely brief comments, Applicant responded to the SOR. Because he had failed to “admit” or “deny” the allegations, he was advised to respond more specifically. In a sworn statement dated August 17, 2019, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. (Item 4) 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 November 1, 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 November 22, 2019. His response was due on December 22, 2019. Applicant chose not to respond to the FORM, for as of January 13, 2020, no response had been received. The case was assigned to me on January 13, 2020.

Findings of Fact

In his two responses to the SOR, Applicant denied, with brief comments, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.f.). Applicant’s comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

Background

Applicant is a 35-year-old employee of a defense contractor. He has been serving as a field and service mechanic with his current employer since March 2018. He served as an aircraft mechanic for another company from April 2017 until March 2018. He previously served in an enlisted status with the U.S. Air Force on active duty from May 2008 until May 2014, when he was honorably discharged. Other than some commentary regarding student loans, he reported no specific information regarding his education. He was apparently granted a secret clearance, but while he does not recall the date, Department Counsel reports the date was 2008. He was married in 2008, and he was divorced in 2017. He has no children.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 31, 2018); Item 8 (Equifax Credit Report, dated April 15, 2019); Item 6 (Enhanced Subject Interview, dated November 1, 2018); and Item 4 (Applicant’s Answers to SOR, dated August 17, 2019).

Applicant reported that he was unemployed on three occasions: from March 2008 until he entered the U.S. Air Force in May 2008; from May 2014, upon his discharge, until November 2014; and from November 2016, upon returning to the United States from employment overseas, until April 2017. (Item 5 – SF 86, dated April 9, 2018, at 16-18) He attributed his financial problems to a variety of factors: his estimated combined total of one year of unemployment; his separation and divorce; and his ex-wife’s financial issues that he felt obligated to try to help her with while forgoing his own financial issues. (Item 5, at 45) He failed to specify the negative impact his separation and divorce had on his finances, or what the specific issues were regarding her finances, and what bills he paid for her.

In April 2018, Applicant contended that he had been in the process of rebuilding his credit for the past year, and that he had already paid down credit cards and “taken care of things in collections.” (Item 5, at 45) He claimed that almost all of his disposable income is used to pay down his debts whenever he can do so. He also stated that he had contacted the company with his previous student loans, and that he was paying that company \$100 per month, with the intention of increasing his payments once he obtains a new position. (Item 5, at 45) Applicant failed to submit any documents to support his contentions that he contacted any creditors; that the U.S. Department of Education had placed his student loans in deferment or forbearance; or that he had been making payments to any creditors.

The SOR alleged six delinquent student-loan accounts totaling approximately \$71,955, as set forth as follows: SOR ¶ 1.a. is a student loan with an unpaid balance of \$23,026 that was charged off and transferred to the government, and because it was charged off, Applicant contends that he is no longer responsible for it. (Item 7, at 11; Item 8, at 1; Item 6, at 7; Item 4, at 1); SOR ¶¶ 1.b. through 1.e. are student loans with unpaid balances of \$3,913; \$3,721; \$3,435; and \$1,868 that were in default and assigned to the government, but Applicant claims they were consolidated and are being paid while he is in school. (Item 8, at 2; Item 6, at 5-8; Item 4, at 1-2); SOR ¶ 1.f. is a student loan with an unpaid balance of \$35,992 for which Applicant initially claimed to be paying the collection agent \$100 per month, but eventually he chose not to make the payments after he learned how creditor procedures work. He initially stated that he intended to wait for “debt forgiveness” until the debt is written off, but if that does not occur by December 2019, he intended to pay it off in full with one lump sum at that time. He subsequently changed his position, claiming that the account was “falsely added and removed from collection credit report.” (Item 7, at 11; Item 8, at 2; Item 5, at 45; Item 4, at 2; Item 6, at 5)

It is noted that despite Applicant’s claimed inability to maintain the six student-loan accounts alleged in the SOR in a current status because of insufficient funds to do so, he managed to take a variety of personal trips, outside of government travel, to Morocco, Spain, and Turkey in June 2016; the Netherlands in May 2017; Greece in July 2017; Ghana in September 2017; and the United Kingdom in December 2017. (Item 5, at 28-37) Furthermore, while Applicant generally referred to insufficient funds as his explanation for failing to maintain his student loans in a current status, it appears that he may have had sufficient funds to make the one promised lump-sum payment of \$35,992, but merely chose not to do so.

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. Sept. 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.

The SOR alleged six delinquent student-loan accounts totaling approximately \$71,955. Applicant initially claimed that he had insufficient funds to maintain those accounts in a current status. It eventually appeared that he had the ability to pay the \$35,992 student loan off in full with one lump sum payment in December 2019. As of the date the record closed, he had not resolved any of those delinquent accounts. Because of the conflicting nature of Applicant's stated positions, AG ¶¶ 19(a), 19(b), 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 student-loan 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 issues to a variety of factors: his estimated combined total of one year of unemployment; his separation and divorce; and his ex-wife's financial issues that he felt obligated to try to help her with while forgoing his own financial issues. As noted above, he failed to specify the negative impact his separation and divorce had on his finances, or what the specific issues were regarding her finances, and what bills he paid for her. It is also troubling that although Applicant initially claimed that he had insufficient funds to maintain his accounts in a current status, he managed to take several personal trips aboard in 2016 and 2017, and he later claimed to have sufficient funds to make a lump-sum payment of \$35,992 in December 2019, something he failed to do.

Based on the developed evidence, it appears that Applicant intentionally chose to ignore his student-loan obligations: he did so with the loan with the unpaid balance of \$23,026 that was charged off, claiming that he is no longer responsible for it; and he did so with the loan with an unpaid balance of \$35,992 that he intended to wait for "debt forgiveness" until the debt is written off. A "charged-off debt" is merely an accounting entry. A creditor considers a debt owed to the creditor to be an asset, but when the value of the asset is in doubt, the creditor is required to change the status of the debt to reflect its current status. When the debt appears to be uncollectible, the creditor can alter the status for accounting purposes from being an asset to charged-off status. Notwithstanding the change to charged-off status, a creditor may still sell the debt to a collection agent, and the debtor may still pay or settle the debt. Eventually, the charged-off debts will be dropped from the debtor's credit report. "[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. (Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.) Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off. "Mere evidence that debts no longer appear on credit reports is not reason to believe that they are not legitimate or that they have been satisfactorily resolved." ISCR Case No. 16-02941 at 2 (App. Bd. Dec. 29, 2017) (citing ISCR Case No. 14-03747 at 2-3 (App. Bd. Nov. 13, 2015)).

Moreover, the Appeal Board has routinely held that a debtor's obligations are not discharged as a result of actions taken by the creditor such as the sale of a debt or a charge-off of the account. "[A] creditor's choice to charge-off a debt for accounting purposes does not affect the debtor's obligation to the creditor." See, e.g., ISCR Case No. 15-02760 at 3 (App. Bd. Dec. 29, 2016) (citing ISCR Case No. 09-01175 at 2, n. 1 (App. Bd. May 11, 2010)).

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 April 2018; underwent his OPM interview in November 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. Other than his unverified claims that he was making some payments to a creditor which he later stopped making, and that he would make a lump-sum payment to another creditor in December 2019, he offered zero documentary evidence to either support his claims, or to reflect that he had made any efforts to resolve his delinquent student-loan 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. In this instance, Applicant stated that he was no longer responsible for one debt, but stated that he intended to resolve another debt in December 2019. His promises appear to be hollow, for there is no evidence that he ever followed through with them.

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 35-year-old employee of a defense contractor. He has been serving as a field and service mechanic with his current employer since March 2018. He served as an aircraft mechanic for another company from April 2017 until March 2018. He previously served in an enlisted status with the U.S. Air Force on active duty from May 2008 until May 2014, when he was honorably discharged. He was apparently granted a secret clearance in 2008.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has six delinquent student-loan accounts totaling approximately \$71,955. He intentionally chose to ignore one student-loan that was charged off, claiming that he is no longer responsible for it; and he did so with another loan because he intended to wait for "debt forgiveness" until the debt is written off. And, although he claimed that he had insufficient funds to maintain his accounts in a current status, he managed to take several personal trips overseas, outside of government travel, in 2016 and 2017. Moreover, he later claimed to have sufficient funds to make a lump-sum payment of \$35,992 in December 2019, something he failed to do.

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.

Aside from Applicant's unverified claims regarding certain payments that were reportedly made and eventually stopped, there is no documentary evidence to indicate that any of Applicant's delinquent student loans have been addressed. In fact, he denied responsibility for one student loan because it had been charged off, and he was waiting for another student loan to be written off. 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.f. | 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