



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



In the matter of:)
)
 ---) ISCR Case No. 19-01995
)
 Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esquire, Department Counsel
For Applicant: *Pro se*

03/18/2020

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 October 24, 2017, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On August 14, 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 October 11, 2019, and again on December 2, 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 January 16, 2020, 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 January 22, 2020. His response was due on February 21, 2020. Applicant chose not to respond to the FORM, for as of March 18, 2020, no response had been received. The case was assigned to me on March 18, 2020. The record closed on March 18, 2020.

Findings of Fact

In his responses to the SOR, Applicant admitted, with brief comments, all of the SOR allegations (SOR ¶¶ 1.a. through 1.g.). Applicant's admissions and accompanying 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 29-year-old employee of a defense contractor. He has been serving as an operations supervisor with his current employer since February 2014. He had previous experience with other employers as a full-time data entry (August 2012 until February 2014), and as a part-time server (May 2009 until March 2013). He is a 2009 high school graduate, with a semester of college credits, but no degree. He enlisted in the U.S. Army Active Reserve in December 2011, and served until he was honorably discharged in December 2017. He transitioned into the Individual Ready Reserve (IRR), and remained in that status until he was released in December 2019. He has never been granted a security clearance. He has never been married, but he has a child, born in 2013.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (Combined Experian, TransUnion, and Equifax Credit Report, dated November 1, 2017); Item 4 (Equifax Credit Report, dated June 12, 2019); Item 5 (Equifax Credit Report, dated January 15, 2020); Item 2 (SF 86, dated October 24, 2017); Item 6 (Enhanced Subject Interview, dated February 13, 2018); Item 6 (Subject Contact, dated February 21, 2018); and Item 1 (Applicant's Answers to SOR, dated October 11, 2019, and December 2, 2019).

Applicant reported that he was unemployed from March 2013 until October 2013. (Item 6, at 5) He identified several factors that led to his financial difficulties. He claimed his difficulties began when he was 21 years old and continued until he was 27 years old, and he indicated that immaturity and youth were his basic causes. His problems were exacerbated when his overtime hours were reduced, leaving him insufficient funds to maintain his accounts in a current status. (Item 6, at 7, 10) As a result, he got behind on his bills.

In his 2017 SF 86, Applicant listed having only one delinquent account – a vehicle repossession – caused by unspecified “financial trouble.” (Item 2, at 32-33) On February 13, 2018, during an interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant did not identify or discuss any other delinquent accounts until he was confronted by the investigator with information associated with additional delinquent accounts. He indicated that he did not list them in his SF 86 because he was confused by the term “charge off.” During a subsequent interview on February 21, 2018, he was able to discuss more specifics regarding his delinquent accounts. He acknowledged that he had not made any payments on the accounts, but indicated that he would contact several of his creditors or collection agents in an effort to start resolving them. He added a confusing comment regarding several of the ignored accounts by noting that they were charged off, and thus they were “resolved.” (Item 6, at 9-10)

The SOR alleged seven delinquent accounts totaling approximately \$27,800, as set forth as follows:

SOR ¶ 1.a. is motor vehicle lease for \$24,000 on a vehicle that Applicant leased for the mother of his child, but when his overtime hours were reduced and he and the woman split up, he was unable to continue making the \$288 monthly payments and the vehicle was involuntarily repossessed in 2016, and \$10,365 was charged off. The remaining unpaid balance is now \$10,979. (Item 3, at 5; Item 4, at 1; Item 5, at 2-3; Item 6, at 6, 8) The account remains delinquent. (Item 1)

SOR ¶ 1.b. is a credit-card account with an unpaid balance of \$9,932 that was charged off in 2016. (Item 3, at 5; Item 4, at 2; Item 5, at 3-4; Item 6, at 10) The account remains delinquent. (Item 1)

SOR ¶ 1.c. is a credit-card account with an unpaid balance of \$2,552 that was charged off in 2015. (Item 3, at 5; Item 4, at 2; Item 5, at 4; Item 6, at 9) The account remains delinquent. (Item 1)

SOR ¶ 1.d. is a credit-card account with an unpaid balance of \$1,818 that was charged off in 2017. (Item 3, at 5; Item 4, at 2; Item 5, at 2; Item 6, at 9) The account remains delinquent. (Item 1)

SOR ¶ 1.e. is a charge account with an unpaid balance of \$655 that was charged off on an unreported date. (Item 4, at 2; Item 5, at 2) However, Applicant contends that the account is still active and that he has been making payments on it since October 2016. Although he failed to submit any documents to support his claims that he has been

making those payments, his January 15, 2020 credit report confirms that the account has been current since December 2017, and that the most recent \$55 payment was made in December 2019, leaving a balance of \$747. (Item 5, at 3) Applicant claims that the remaining balance as of December 2019 is \$842. (Item 1) The account has been resolved.

SOR ¶ 1.f. is an Internet or cable-television account with an unpaid balance of \$1,341 that was placed for collection in 2017. (Item 3, at 8; Item 6, at 7, 9) During his February 21, 2018 OPM interview, Applicant indicated he would contact the creditor or collection agent to resolve the debt, but as of his October 2019 Answer to the SOR, he claimed to be working on it to be settled within six months. (Item 6, at 9; Item 1) The account remains delinquent. (Item 1)

SOR ¶ 1.g. is a cellular-telephone account with an unpaid balance of \$523 that was placed for collection in 2016. (Item 3, at 8; Item 6, at 6-9) During his February 21, 2018 OPM interview, Applicant indicated he would contact the creditor or collection agent within the following month to resolve the debt, but as of his October 2019 Answer to the SOR, he claimed to be working on it to be settled within three months. (Item 6, at 8-9; Item 1) The account remains delinquent. (Item 1)

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. Although he had previously indicated that he planned to seek credit counseling, there is no documentary 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 seven delinquent accounts, including one vehicle repossession and four charged-off accounts, totaling approximately \$27,800. One of those debts became delinquent as early as 2015, and by the time the record closed in March 2020, only one of them had been verifiably addressed by Applicant. 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. As noted above, Applicant attributed his financial problems to his immaturity and youth, and felt that his problems were exacerbated when his overtime hours were reduced. While the reduction of overtime hours was largely beyond his control, overtime is not a guaranteed employment benefit, it is a speculative or potential one. A review of his credit reports reveals that Applicant simply stopped making payments over time, with the initial nonpayment starting in 2015, and others following each year thereafter, resulting in four accounts being charged off, one vehicle being involuntarily repossessed, and two other accounts merely being placed for collection. As of the date the record closed in March 2020, he had verifiably addressed only one such account with minimum monthly payments of \$55, leaving the remaining debts unaddressed by him. 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 his financial difficulties were not infrequent and they are likely to remain unchanged. Applicant completed his SF 86 in October 2017; underwent his OPM interviews in February 2018; and the SOR was issued in August 2019. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. In February 2018, he promised to start satisfying his debts in the near future. In his Answers to the SOR, he was still promising to settle two of the debts within three to six months, but with the exception of one debt, he still had taken no positive actions to address the remaining debts. Although he could have indicated some positive action in response to the FORM, he failed to do so. 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)).

Based on the evidence, it appears that Applicant intentionally chose to ignore most of his delinquent accounts even after he was interviewed by OPM. With that one exception, he failed to resolve any of his delinquent accounts or submit recommended

documentation in over one year since his OPM interviews. An applicant who begins to resolve 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)). In this instance, there has been promises, but very little action following those promises.

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.

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)).

In the absence of any significant positive activity by Applicant, of financial counseling, and a budget, it remains difficult to determine if Applicant is currently in a better position financially than he had been. His 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. He is a 29-year-old employee of a defense contractor, and he has been serving as an operations supervisor since February 2014. He had previous experience with other employers as a full-time data entry (August 2012 until February 2014), and as a part-time server (May 2009 until March 2013). He is a 2009 high school graduate, with a semester of college credits, but no degree. He enlisted in the U.S. Army Active Reserve in December 2011, and served until he was honorably discharged in December 2017. He transitioned into the IRR, and remained in that status until he was released in December 2019.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant was immature and failed to exercise sufficient control over his various accounts to assure that they were maintained in a current status. As a result, seven accounts totaling approximately \$27,800 became delinquent, including one vehicle repossession and four charged-off accounts. One of those debts became delinquent as early as 2015, and by the time the record closed in March 2020, only one of them had been verifiably addressed by Applicant. He routinely made unfulfilled promises to address his debts, but he failed to do so, even with one having a relatively modest balance of \$523.

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.

Applicant's current track record is poor, at best. Overall, the evidence leaves me 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. and 1.g.:	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