



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 --- ) ISCR Case No. 19-02306  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel  
For Applicant: *Pro se*

02/28/2020

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**Decision**

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GALES, Robert Robinson, Administrative Judge:

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

**Statement of the Case**

On November 10, 2016, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On August 23, 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.

It is unclear when Applicant first responded to the SOR because his response was undated and failed to follow the guidelines previously set forth. On November 11, 2019, he again 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 December 17, 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 December 30, 2019. His response was due on January 29, 2020. Applicant chose not to respond to the FORM, for as of February 24, 2020, no response had been received. The case was assigned to me on February 24, 2020. The record closed on February 24, 2020.

### **Findings of Fact**

In his combined responses to the SOR, Applicant admitted, with very brief comments, three of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.c.). Applicant's admissions and his 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 37-year-old employee of a defense contractor. He has been serving as engineer with his current employer since August 2017, and previously worked for the same contractor as a systems administrator from March 2016 until July 2017. A 2001 high school graduate, he received an associate's degree in 2013, and he earned additional credits from a college but no other degree. He enlisted in the U.S. Army in November 2004, and served on active duty, including two tours in Iraq (August 2005 until December 2005, and December 2007 until December 2008), until he was discharged in March 2013 with a general discharge under honorable conditions. He was granted a secret clearance in 2016. He was married in 2007, and he has five children, born in 2012, 2013, 2015, and 2017 (twins).

#### **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 March 2, 2017); Item 6 (Equifax Credit Report, dated May 1, 2019); Item 4 (Enhanced Subject Interview, dated June 7, 2018); and Item 2 (Applicant's Answers to SOR, dated November 11, 2019).

Applicant reported that he was unemployed from March 2013, when he was discharged from the U.S. Army, until September 2013; and from January 2015, when he was terminated for tardiness, until April 2015. He attributed his financial problems to only one factor: he was not earning enough money. (Item 4, at 24)

In his November 2016 SF 86, Applicant denied having any delinquent accounts. (Item 3 (2016 SF 86), at 43-44) However, when he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM) on June 7, 2018, after being confronted by the investigator, he discussed various accounts, but contended that he was unaware that they were delinquent, or as he characterized them individually, a “negative account.” (Item 4, at 44-47) The OPM investigator offered Applicant the opportunity to furnish documentation regarding his delinquent accounts that they discussed, but he failed to do so during or after the interview. (Item 4, at 20-23)

The SOR alleged seven delinquent accounts totaling approximately \$28,082, but as Department Counsel noted, there was a scrivener’s error to one of the allegations, and the actual amount should have been \$27,362. The accounts can be divided into two groups: a. those for which Applicant acknowledged that he had taken no action prior to the issuance of the SOR, but which he intended to take care of them soon, after he completes resolving the smaller accounts; and b. those for which Applicant contended that as of “today,” the account had been settled.

In the first group, there are three delinquent accounts, set forth as follows: SOR ¶ 1.a. is an automobile loan with an unpaid balance of \$14,600 that was placed for collection and charged off in February 2016. (Item 5, at 6; Item 6, at 2; Item 4, at 23; Item 2). SOR ¶ 1.b. is a personal loan with a past-due and unpaid balance of \$4,252 that was placed for collection and charged off in November 2013, but as of April 2019, the unpaid balance had increased to \$11,173. (Item 5, at 5; Item 6, at 2; Item 4, at 23; Item 2) SOR ¶ 1.c., as informally amended, is a personal loan with an unpaid balance of \$4,200 that was placed for collection in November 2013. (Item 5, at 13; Item 6, at 2; Item 4, at 21; Item 2)

In the second group, there are four delinquent accounts which Applicant contended he had resolved. They are set forth as follows: SOR ¶ 1.d. is an unspecified type of account with an unpaid balance of \$306 that was placed for collection and charged off in June 2014. (Item 5, at 7; Item 4, at 2); SOR ¶ 1.e. is a credit-card account with an unpaid balance of \$1,178 that was placed for collection and sold to a debt purchaser. (Item 5, at 6; Item 4, at 22-23) SOR ¶ 1.f. is a credit-card account with an unpaid balance of \$1,861 that was placed for collection in February 2015. (Item 5, at 13; Item 4, at 20) SOR ¶ 1.g. is a credit-card account with an unpaid balance of \$965 that was placed for collection in February 2016. (Item 5, at 13; Item 4, at 20)

Other than Applicant’s unverified contentions regarding his efforts to resolve the last four delinquent accounts, there is no documentary evidence, such as repayment plans, cancelled checks, bank account registers, receipts from creditors, or other material correspondence between him and his creditors to support his position. In December 2019, Department Counsel noted in the FORM that Applicant had not provided any documentation to support his contentions in his Answer to the SOR. Despite that notice,

Applicant failed to furnish any material documentation. In the absence of such documentation, I conclude that Applicant's delinquent accounts have not yet entered the process of being resolved.

It is not known what Applicant's current financial resources may be because he did not report his current net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of financial counseling. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been.

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence." "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) "Substantial evidence" is "more than a scintilla but less than a preponderance." (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. 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, as informally amended, alleged seven delinquent accounts totaling approximately \$27,362. Two of those debts became delinquent as early as 2013, and by the time the record closed in February 2020, three of them had admittedly not been addressed by Applicant, and he offered no documentary proof that he had addressed the remaining four delinquent debts. 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. Applicant attributed his financial problems to only one factor: he was not earning enough money. As noted above, two of those debts became delinquent as early as 2013, and another became delinquent in 2014. At least until the date the record closed, none of his delinquent accounts were conclusively addressed by Applicant. 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, is sufficient to conclude that his financial difficulties were not infrequent and they are likely to remain unchanged. Applicant completed his SF 86 in November 2016; underwent his OPM interview in June 2018, when he was offered the opportunity to submit documentation regarding his delinquent accounts; 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 November 2019, he promised to satisfy his debts “soon.” As of the closing of the record, he has taken no actions to address, much less resolve, any of his delinquent accounts. None of his delinquent debts are even in the process of being addressed.

Based on the evidence, Applicant failed to resolve any of his delinquent accounts or submit recommended documentation in or after June 2018 – approximately 20 months ago. 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)).

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 the absence of any positive activity by Applicant, of financial counseling, and a budget, it remains difficult to determine if he 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 37-year-old employee of a defense contractor. He has been serving as engineer with his current employer since August 2017, and previously worked for the same contractor as a systems administrator from March 2016 until July 2017. A 2001 high school graduate, he received an associate's degree in 2013, and he earned additional credits from a college but no other degree. He enlisted in the U.S. Army in November 2004, and served on active duty, including two tours in Iraq (August 2005 until December 2005, and December 2007 until December 2008), until he was discharged in March 2013 with a general discharge under honorable conditions. He was granted a secret clearance in 2016.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has seven delinquent accounts totaling approximately \$27,362. Two of those debts became delinquent as early as 2013, and by the time the record closed in February 2020, three of them had admittedly not been addressed by Applicant, and he offered no documentary proof that he had addressed the remaining four delinquent debts.

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 abysmal at best, delaying any resolution efforts, supported by documentation, at least until after the record closed in February 2020. 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.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.

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ROBERT ROBINSON GALES  
Administrative Judge