



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 ---) ISCR Case No. 19-02397
)
 Applicant for Security Clearance)

Appearances

For Government: Patricia M. Lynch-Epps, Esquire, Department Counsel
For Applicant: *Pro se*

02/19/2020

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 January 30, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On August 28, 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, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. (Item 2) A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on December 5, 2019, and he was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on December 20, 2019. His response was due on January 19, 2020. Applicant chose not to respond to the FORM, for as of February 14, 2020, no response had been received. The case was assigned to me on February 14, 2020. The record closed on February 14, 2020.

Findings of Fact

In his response to the SOR, Applicant admitted, with very brief comments, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.g.). 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 32-year-old employee of a defense contractor. He has been serving as admin support with his current employer since October 2014. A 2005 high school graduate, he earned credits from a college but no degree. He served in various capacities with the U.S. military after enlisting in the U.S. Marine Corps (USMC) in November 2007. He served on active duty until November 2011, when he transitioned into the USMC Inactive Reserve. In April 2013, he entered the U.S. Army Active Reserve, and he remained there until May 2015, when he again returned to the USMC Inactive Reserve. He remained with the USMC Inactive Reserve until September 2015, when he was honorably discharged. He was granted a secret clearance in 2009. He was married in 2010, and he has two children, born in 2010 and 2012, as well as a stepchild, born in 2008.

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 February 16, 2019); Item 4 (Equifax Credit Report, dated August 6, 2019); Item 3 (SF 86, dated January 30, 2019); Item 6 (Enhanced Subject

Interview, dated March 12, 2019); and Item 2 (Applicant's Answers to SOR, dated October 11, 2019).

Applicant reported that he was unemployed from November 2011, when he was honorably discharged from active duty, until April 2012; from September 2012, when he voluntarily quit a job, until May 2013; and from May 2014, when he voluntarily quit another job, until June 2014. He attributed his financial problems to a variety of factors: he lived above his means for an unspecified period; he went through periods of unemployment; his wife was not earning enough; and there were unspecified issues with the U.S. Department of Veterans Affairs (VA) involving an overpayment, the "garnishment" of his federal and state income tax refunds totaling approximately \$10,000, and a successful appeal by him, followed by a delay in refunding those funds to him. (Item 6, at 4; Item 3, at 44) Applicant failed to submit any documents to support the issues raised regarding the VA.

In his January 2019 SF 86, Applicant listed four delinquent accounts, including three apartment leases, two of which he claimed had already been resolved, and a repossessed automobile. He acknowledged that he had not taken any action to resolve the other lease or the automobile loan, but he intended to do so. (Item 3, at 44-47)

In March 2019, during an interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant acknowledged that he had several other delinquent accounts. He claimed that, until the time of the interview, his options for rectifying his financial situation had been limited, but with steady job, he was not seeking counseling or credit consolidation services to solve his financial issues. He stated that once he receives his tax refund, he would start rectifying some of his delinquent accounts. The OPM investigator offered Applicant the opportunity to furnish documentation regarding his delinquent accounts, but he failed to do so during or even after the interview. (Item 6, at 4)

The SOR alleged seven delinquent accounts totaling approximately \$15,147, as set forth as follows: SOR ¶ 1.a. is a jointly-held automobile loan on a vehicle that was repossessed, leaving a past-due balance of \$2,026 that was placed for collection (Item 5, at 6); SOR ¶ 1.b. is an individual automobile loan with a past-due and unpaid balance of \$8,651 that was placed for collection (Item 5, at 6); SOR ¶ 1.c. is a wireless-telephone account with an unpaid balance of \$2,035 that first became delinquent in 2015 and was eventually sold to a debt purchaser (Item 5, at 6; Item 4, at 1-2); SOR ¶ 1.d. is an unspecified type of account with a federal department with an unpaid balance of \$833 that was charged off (Item 5, at 7; Item 4, at 2); SOR ¶ 1.e. is a medical account with an unpaid balance of \$1,125 that was placed for collection in 2018 (Item 5, at 9); SOR ¶ 1.f. is a cable-television account with an unpaid balance of \$293 that was placed for collection in 2018 (Item 5, at 9); and SOR ¶ 1.g. is a fitness center or gymnasium account with an unpaid balance of \$184 that was placed for collection in 2019 (Item 5, at 9).

Other than Applicant's promised intentions to start resolving his delinquent accounts, he failed to offer any evidence, oral or documentary, of any such efforts. He did not state that he had commenced negotiations with any of his creditors, or that he had started making payments to any of his creditors. There is still no evidence of financial counseling. In November 2019, Department Counsel noted in the FORM that Applicant had not provided any documentation to support his contentions in his Answer to the SOR, essentially that he would satisfy his delinquent debts in the near future. 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.

Despite Applicant's contention in March 2019 that his overall financial situation was sufficient to not seek financial counseling or credit consolidation, 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 seven delinquent accounts totaling approximately \$15,147. One of those debts became delinquent as early as 2015, and by the time the record closed in February 2020, none of them had been 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. Applicant attributed his financial problems to a variety of factors: he lived above his means for an unspecified period; he went through periods of unemployment; his wife was not earning enough; and there were unspecified issues with the VA involving an overpayment, the “garnishment” of his federal and state income tax refunds totaling approximately \$10,000, and a successful appeal by him, followed by a delay in refunding those funds to him. As noted above, one of those debts became delinquent as early as 2015, and, at least until the date the record closed, none of them were 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, 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 January 2019; underwent his OPM interview in March 2019; 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 October 2019, he promised to satisfy his debts in the near future. 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, it appears that Applicant intentionally chose to ignore his delinquent accounts even after he was interviewed by OPM. He failed to resolve any of his delinquent accounts or submit recommended documentation in or after March 2019 – nearly one year 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 32-year-old employee of a defense contractor. He has been serving as admin support with his current employer since October 2014. A 2005 high school graduate, he earned credits from a college but no degree. He served in various capacities with the U.S. military after enlisting in the USMC in November 2007. He served on active duty until November 2011, when he transitioned into the USMC Inactive Reserve. In April 2013, he entered the U.S. Army Active Reserve, and he remained there until May 2015, when he again returned to the USMC Inactive Reserve. He remained with the USMC Inactive Reserve until September 2015, when he was honorably discharged. He was granted a secret clearance in 2009.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has seven delinquent accounts totaling approximately \$15,147. As of the date the record closed in February 2020, none of them were addressed by Applicant, even though he promised that he would start doing so in the near future – nearly one year ago.

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 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.

ROBERT ROBINSON GALES
Administrative Judge