



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



In the matter of:)
)
) ISCR Case No. 19-02421
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas T. Temple, Esquire, Department Counsel
For Applicant: *Pro se*

07/16/2020

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

Statement of the Case

On June 17, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On September 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 Guideline B (Foreign Influence) 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.

Applicant responded to the SOR on October 11, 2019, 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 March 25, 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 April 9, 2020. His response was due on May 9, 2020. Applicant timely submitted a number of documents in response to the FORM, to which there were no objections. The case was assigned to me on June 12, 2020. The record closed on June 12, 2020.

Findings of Fact

In his response to the SOR, Applicant admitted, with brief comments, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.o.), and he denied all of the SOR allegations pertaining to foreign influence (SOR ¶¶ 2.a. through 2.c.). Applicant's admissions and his comments are incorporated herein. As a result of the evidence furnished with respect to the allegations related to foreign influence, the Government withdrew SOR allegations 2.a. through 2.c., and those allegations are no longer an issue. (FORM, at 1) 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 33-year-old employee of a defense contractor. He has been serving in several positions of increased importance with his current employer since September 2014, and he now supervises a staff of 18 individuals. According to his Agency Director, Applicant is a "mission critical" employee providing "essential" federal government services. (Attachment 5, dated March 23, 2020, to Response to the FORM) He previously served as a doorman from May 2011 until February 2014, and he was unemployed from February 2014 until September 2014. He received a bachelor's degree in 2011. He has never served in the U.S. military. He is unsure if he had been granted a security clearance when he took his current job. He has never been married.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (SF 86, dated January 17, 2018); Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 2, 2018);

Item 8 (Equifax Credit Report, dated June 4, 2019); Item 6 (LexisNexis Judgment and Lien Filings, undated); Item 2 (Applicant's Answers to the SOR, dated October 11, 2019), 2018); and Applicant's Responses to the FORM, dated April 17, 2020, with attachments).

In addition to his period of unemployment, Applicant reported that he had a 2012 bankruptcy discharge under Chapter 7 of the U.S. Bankruptcy Code. He attributed his financial problems to the following factors: he was young and not mature enough to handle his personal finances back then, that he could not handle his finances while in college, and that he did not know how to handle his finances when he was in his 20s. (Item 2, at 1; Item 3, at 35; Response to the FORM, at 1-2) He acknowledged making mistakes in the past, but contends that he has learned from his mistakes and is now a different person. He now has a budget as well as a plan to resolve his delinquent debts. (Response to the FORM, at 1)

In addition to the 2012 bankruptcy, the SOR alleged 14 delinquent accounts totaling approximately \$66,905, with one delinquent credit-card account in the amount of \$2,867, and the remaining delinquent accounts, totaling \$64,038, characterized as student loans. The accounts can be divided into two groups: (a) those for which Applicant contends that he had paid off; and (b) those for which Applicant contends that they are under repayment plans and are in the process of being paid off.

In the first group, there are two delinquent accounts, set forth as follows:

SOR ¶ 1.e. is a student loan with a university that became delinquent and went to judgment in the amount of \$7,604 in 2017. (Item 7, at 6; Item 8, at 2; and Item 6) Applicant contended that he had been making payments for "the past 2 years," and that he reduced the unpaid balance to \$5,531. (Item 2, at 1) On October 9, 2019, he made a final payment to the designated Court Officer in the amount of \$5,351, and on December 6, 2019, a Warrant to Satisfy Judgment was filed. (Item 2, attachments; Response to the FORM attachments) The judgment has been resolved.

SOR ¶ 1.i. is a credit-card account with an unpaid balance of \$2,867 that was placed for collection. (Item 8, at 2) The creditor and Applicant agreed to a settlement for a reduced amount, and on October 11, 2019, Applicant made a payment in the amount of \$1,679. (Item 2, at 1; Response to the FORM, at 1; Settlement Paid Confirmation, dated October 28, 2019, attached to the Response to the FORM) The account has been resolved.

In the second group, there are 12 delinquent student-loan accounts which Applicant contended he is in the process of resolving: SOR ¶ 1.b. is with a servicer of student loans, and has an unpaid and past-due balance of \$15,734 that was placed for collection in 2017. (Item 8, at 1; Item 7, at 15) Applicant and the creditor agreed to an income-driven repayment plan, and in June 2019, three months before the SOR was issued, he made his initial payment of over \$187. On a monthly basis thereafter, he continued to make payments of at least that amount, and sometimes over \$191. The most recent verified payment occurred in April 2020. (Account History, various dates, attached

to Item 2 and Response to the FORM; Payment Confirmation, dated January 14, 2020, attached to Response to the FORM)

As part of the federal CARES ACT legislation associated with the COVID-19 pandemic passed on March 27, 2020, the loan servicer suspended payments and interest accrual on all U.S. Department of Education (DOE) owned loans until September 30, 2020. (www.navient.com/covid-19) In other words, Applicant's student loans with the loan servicer are currently in a forbearance status. Nevertheless, despite the forbearance status, he apparently continued to voluntarily make at least one payment after it went into effect. The account was in the process of being resolved.

The remaining defaulted student loans are currently held by the DOE, and they are in the following amounts: SOR ¶ 1.c. (\$7,659); SOR ¶ 1.d. (\$4,451); SOR ¶ 1.f. (\$4,665); SOR ¶ 1.g. (\$3,818); SOR ¶ 1.h. (\$3,476); SOR ¶ 1.j. (\$1,896); SOR ¶ 1.k. (\$3,329); SOR ¶ 1.l. (\$3,169); SOR ¶ 1.m. (\$2,309); SOR ¶ 1.n. (\$1,497); and SOR ¶ 1.o. (\$1,431). (Item 7, at 6-8; Item 8, at 2, 8) In October 2019, Applicant and the credit recovery company that was representing the DOE established a rehabilitation agreement under which it was determined that, based on his income, he was to make monthly payments in the amount of \$92. That agreement was quickly modified in November 2019 when all of his student loans were consolidated, and he also paid an additional \$118 for the remaining loans. Commencing in December 2019, the consolidated payment of \$210 was made by automatic electronic withdrawals, and it was established that such future payments in the same amount was authorized. According to the credit recovery company, Applicant had a principal balance of \$35,556; interest in the amount of \$7,129; and a collection charge of \$7,649, totaling nearly \$50,335. (Item 2, at 1; Bank Account debit, dated October 11, 2019, attached to Item 2; Letter, dated October 10, 2019; and Recurring Payment Confirmation, dated November 12, 2019, both attached to the Response to the FORM)

Applicant brought the student loans out of a default status when he started his monthly payments under the rehabilitation agreement, and although it was not developed that the payments have been continued, the loans are in forbearance, and they are in the process of being resolved.

With respect to Applicant's Chapter 7 bankruptcy, alleged in SOR ¶ 1.a., he voluntarily filed for such bankruptcy on December 30, 2011. He also completed credit counseling that same day and received a certificate. He listed \$46,573 owed to creditors holding unsecured priority claims, essentially student loans; as well a \$20,036 owed to creditors holding unsecured claims, essentially consumer loans and credit-card balances, but also including the creditor alleged in SOR ¶ 1.e. The total of liabilities (\$66,609) was, according to the Bankruptcy Trustee, scheduled to be discharged. An Order was issued on April 5, 2012, discharging the debtor. (Items 4 and 5 (Extracts of the bankruptcy file, various dates)) While student loans are not normally discharged without convincing the bankruptcy judge of certain factors, in this instance, the loan alleged in SOR ¶ 1.e. is described in the bankruptcy petition as an unsecured nonpriority claim on an installment account, turned into a judgment, and it appears that it was discharged by the bankruptcy judge, as well as paid off by Applicant.

Despite Applicant's contention that he has changed his financial outlook and ways since he matured into his 30s, it is not known what his 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. However, considering his successful efforts to resolve two debts, and his rehabilitation of his now-consolidated student loans from a default status to a forbearance status, there appears to be reduced financial pressure on him, and with his continued employment, he seems to be on the path to eventual financial recovery. There is evidence of a budget. There is evidence of financial counseling in 2011.

Character References

Applicant's site manager has known Applicant for the past four years, and approximately two years after working together, she promoted him to supervisor status where he essentially serves as her "right-hand-man." Applicant is considered to be a very honest and responsible employee, and she feels very comfortable and has confidence working with him. (Attachment 7, dated April 4, 2020, to Response to the FORM)

A coworker has known Applicant for approximately four years, and she considers him to possess very good moral character, integrity, responsibility, and dedication. He is also enthusiastic, cheerful, and very supportive. (Attachment 6, dated April 9, 2020, to Response to the FORM)

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, as amended by the withdrawal of the foreign influence allegations, alleged, in addition to the 2012 bankruptcy, 14 delinquent accounts totaling approximately \$66,905, with one delinquent credit-card account in the amount of \$2,867, and the remaining delinquent accounts, totaling \$64,038, characterized as student loans. 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(c) and 20(d) apply, and AG ¶ 20(a) minimally applies. In addition to his period of unemployment, Applicant attributed his financial problems to the following factors: he was young and not mature enough to handle his personal finances back then, that he could not handle his finances while in college, and that he did not know how to handle his finances when he was in his 20s. He acknowledged making mistakes in the past, but contends that he has learned from his mistakes and is now a different person. He now has a budget as well as a plan to resolve his delinquent debts.

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.

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)). However, in this instance, Applicant commenced his engagement with his creditors, as well as some payments under repayment plans, well before the SOR was issued. By the date the record closed, all of his delinquent accounts were either conclusively resolved by Applicant, or they were in the process of being resolved.

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)).

Applicant currently appears to be in a better position financially than he had been, for his only substantial continuing debts are his consolidated student loans which are under forbearance under the CARES Act. His actions under the difficult circumstances with which he was confronted, no longer 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 against mitigating Applicant's financial concerns. He failed to exercise sufficient control over his various accounts, even after his earlier delinquent accounts were discharged in 2012, and one credit-card account and numerous student loans went into default, with one such account becoming a judgment against him.

The mitigating evidence under the whole-person concept is simply more substantial and compelling. Applicant is a 33-year-old employee of a defense contractor. He has been serving in several positions of increased importance with his current employer since September 2014, and he now supervises a staff of 18 individuals. According to his Agency Director, Applicant is a "mission critical" employee providing "essential" federal government services. He previously served as a doorman from May 2011 until February 2014, and he was unemployed from February 2014 until September 2014. He received a bachelor's degree in 2011. He is unsure if he had been granted a security clearance when he took his current job. His financial difficulties arose when he

was in college and in his 20's, but now that he has matured, he apparently underwent a paradigm shift and appears to be a responsible adult. Applicant commenced his engagement with his creditors, as well as some payments under repayment plans, well before the SOR was issued. By the date the record closed, all of his delinquent accounts were either conclusively resolved by Applicant, or they were in the process of being resolved.

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 fair-to-good and encouraging, commencing meaningful resolution efforts, supported by documentation, well before the SOR was issued. By the time the record closed, all of his delinquent accounts were either resolved or were in the process of being resolved. Overall, the evidence leaves me without substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated 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:	FOR APPLICANT
Subparagraphs 1.a. through 1.o.:	For Applicant

Paragraph 2, Guideline B: WITHDRAWN

Subparagraphs 1.a. through 1.c.: Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge