



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 ---) ISCR Case No. 19-02503
)
 Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

03/09/2020

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 3, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On October 26, 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 November 12, 2019, Applicant responded to the SOR, and he elected to have his case decided on the written record in lieu of a hearing. (Item 3) 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 8, 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 timely submitted a one-page statement to the FORM with seven attachments which were accepted without objection. The case was assigned to me on March 5, 2020. The record closed on March 5, 2020.

Findings of Fact

In his response to the SOR, Applicant admitted, with brief comments, all of the SOR allegations (SOR ¶¶ 1.a. through 1.c.). 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 48-year-old employee of a defense contractor. He has been serving as a computer operator with his current employer since June 2018. He had previous experience as a quality control inspector (July 2015 until July 2017), and as a drilling fluids specialist (May 2012 until February 2015). He is a 1989 high school graduate. He enlisted in the U.S. Navy in April 1992, and served on active duty until he was honorably retired as a petty officer first class (E-6) in May 2012. He was granted a secret clearance in July 1992. He was married in 1996, and divorced in 2008. He has no children.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 4, 2018); Item 7 (Equifax Credit Report, dated May 13, 2019); Item 8 (Equifax Credit Report, dated December 18, 2019); Item 4 (SF 86, dated June 3, 2018); Item 5 (Enhanced Subject Interview, dated February 28, 2019); and Item 3 (Applicant's Answers to SOR, dated November 12, 2019).

Applicant reported that he was unemployed due to layoffs on two occasions: from February 2012 until February 2015, and from July 2017 until June 2018. (Item 4, at 13-14) As a result of the cumulative effect of his layoffs, he underwent periods of financial

strain and got behind on his bills. Several accounts became delinquent, and although he attempted to resolve issues with his home mortgage, the house was eventually foreclosed.

In his June 2018 SF 86, Applicant candidly listed having five delinquent accounts, including his foreclosure, attributing them to his unemployment and resulting insufficient funds. (Item 4, at 35-40) In February 2019, during an interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant characterized his financial situation as “improving.” He discussed four specific accounts, and he claimed that he had been in contact with collection agencies, and he has either been making payment arrangements to pay off his debts, or he has been making monthly payments to his creditors. (Item 5, at 5) In his Answer to the SOR, he confirmed that since returning to work, he had made arrangements with his creditors, and that payments have been regularly made on all accounts. (Item 3, at 2)

Applicant’s May 2019 credit report reported one foreclosure and four charged-off accounts (one of which was listed under both the original creditor and the debt purchaser), and reflected that other accounts either were current or had zero balances. (Item 7) His December 2019 credit report reported that Applicant had made payments to several accounts that had resulted in decreases of the remaining balances for several delinquent accounts. (Item 8)

The SOR alleged three delinquent accounts totaling approximately \$35,474, not approximately \$37,000 as alleged by Department Counsel, as set forth as follows:

SOR ¶ 1.a. is a credit-card account with a past due and unpaid balance of \$16,171 that was charged off in the amount of \$16,721. Applicant had been making payments, with the most recent reported \$50 payment listed in his December 2019 credit report made in November 2019, and the unpaid balance had been reduced to \$15,821. (Item 6, at 10; Item 7, at 2; Item 8, at 2; Item 5, at 5) However, Applicant submitted two receipts from the collection agent reflecting \$50 payments made in December 2019 and January 2020, reducing the remaining balance to \$15,721 as of January 24, 2020. (Letters, dated December 23, 2019, and January 24, 2020, attached to his Response to the FORM) The account is in the process of being resolved.

SOR ¶ 1.b. is another credit-card account with a past due and unpaid balance of \$16,141 that was charged off in the amount of \$16,716. Applicant had been making payments, with the most recent reported \$150 payment listed in his December 2019 credit report made in November 2019, and the unpaid balance had been reduced to \$15,091. (Item 6, at 9; Item 7, at 2; Item 8, at 2; Item 5, at 5) However, Applicant submitted two receipts from the collection agent reflecting \$150 payments made in December 2019 and January 2020, reducing the remaining balance to \$14,792 as of January 23, 2020. (Letters, dated November 21, 2019, and January 23, 2020, attached to his Response to the FORM) The account is in the process of being resolved.

SOR ¶ 1.c. is a furniture store charge account with an unpaid balance of \$3,162 that was charged off and sold to a debt purchaser. Applicant had been making payments,

with the most recent reported \$51 payment listed in his December 2019 credit report made in December 2019, and the unpaid balance had been reduced to \$2,783. (Item 6, at 9; Item 7, at 2; Item 8, at 1; Item 5, at 5) However, Applicant submitted two receipts from the debt purchaser reflecting \$51 payments made in January 2020 and February 2020, reducing the remaining balance to \$2,733 as of January 23, 2020. (Letters, dated January 3, 2020, and January 22, 2020, attached to his Response to the FORM) The account is in the process of being resolved.

Despite Applicant's contention in February 2019 that his overall financial situation was "improving," 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 once his employment is secured he planned to seek credit counseling, there is no documentary evidence of financial counseling. (Item 4) 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 three delinquent accounts totaling approximately \$35,474. Those three accounts became delinquent because of Applicant's inability to maintain them in a current status due to his unemployment. 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(a), 20(b), 20(c), and 20(d) all partially or fully apply. As noted above, Applicant's financial problems were caused by two events that were largely beyond his control: he was laid off from two jobs, and the periods of unemployment left him without the financial means to maintain his accounts in a current status. A review of his credit reports reveal that while these particular accounts remained delinquent, he successfully addressed most of his other accounts. Throughout the security clearance review process, Applicant was proactive and candid. In February 2019 – approximately nine months before the SOR was issued – he characterized his financial situation as “improving,” and he claimed that he had been in contact with his creditors or their representatives, and that he has either been making payment arrangements to pay off his debts, or he has been making monthly payments on them. Documentary evidence supports his claims that he has been making periodic payments to each of his three SOR-related creditors.

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.

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)). In this instance, there is substantial evidence, supported by documentation, that Applicant did not merely make promises to pay his debts, but took good-faith corrective actions with respect to them well before the SOR was issued.

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)).

There is no evidence of financial counseling or a budget. Although it remains difficult to determine if Applicant is currently in a better position financially than he had been, 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 to assure that they were maintained in a current status. As a result, three accounts were placed for collection and charged off.

The mitigating evidence under the whole-person concept is simply more substantial and compelling. Applicant is a 48-year-old employee of a defense contractor. He has been serving as a computer operator with his current employer since June 2018. He had previous experience as a quality control inspector (July 2015 until July 2017). And as a drilling fluids specialist (May 2012 until February 2015). He is a 1989 high school graduate. He enlisted in the U.S. Navy in April 1992, and served on active duty until he was honorably retired as a petty officer first class (E-6) in May 2012. He was granted a secret clearance in July 1992. His financial problems were not self-made difficulties. They were created by two layoffs and two periods of unemployment. As soon as he was financially able, well before the SOR was issued, he started addressing his accounts.

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 well before the SOR was issued. 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.c.:	For 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