



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



In the matter of:)
)
) ISCR Case No. 19-03344
)
Applicant for Security Clearance)

Appearances

For Government: Carroll Connelley, Esquire, Department Counsel
For Applicant: *Pro se*

10/16/2020

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 June 19, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On February 3, 2020, the Defense Counterintelligence and Security Agency (DCSA) 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), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA 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.

In a notarized statement, dated March 4, 2020, Applicant responded to the SOR, and he requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 17, 2020. The case was assigned to me on July 28, 2020. A Notice of Hearing was issued on August 3, 2020. I convened the hearing as scheduled on August 19, 2020.

During the hearing, Government Exhibits (GE) 1 through GE 5, Applicant Exhibits (AE) A through AE C, and Administrative Exhibit I were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 28, 2020. I kept the record open until September 16, 2020, to enable him to supplement it. He took advantage of that opportunity and timely submitted several documents which were marked and admitted as AE D through AE G without objection. The record closed on September 16, 2020.

Findings of Fact

In his response to the SOR, Applicant admitted, with comments, two of the three SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. and 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 28-year-old employee of a defense contractor. He has been serving as an acquisition management analyst with his current employer since May 2020. He previously worked as a business analyst for another contractor from September 2018 until May 2020. He was unemployed from September 2017, when another employer lost a contract and laid off its employees, including Applicant, and he remained unemployed until September 2018. A 2009 high school graduate, he received a bachelor's degree in 2014. He has never served with the U.S. military. He was granted a secret clearance in 2014. He has never been married, and he has no children.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (SF 86, dated June 19, 2019); GE 2 (Equifax Credit Report, dated July 9, 2020); GE 3 (Equifax Credit Report, dated July 25, 2019); and Applicant's Answer to SOR, dated November 11, 2019).

In his SF 86, Applicant acknowledged having two delinquent accounts that he attributed to his unemployment. He contended that he was making monthly payments to one creditor, and that he would reach out to the other creditor to seek an "amicable solution to catch up on payments." (GE 1, at 33-35)

The SOR alleged three delinquent accounts totaling approximately \$29,454, set forth as follows:

SOR ¶ 1.a. refers to an automobile loan opened in December 2015 that became delinquent in June 2018, and \$21,944 was charged off. The account was closed by the creditor. (GE 3, at 1; Tr. at 35-36) In October 2018, with funds derived from an inheritance, Applicant made a \$3,240 payment to the creditor. (AE E; Tr. at 36-37) That was the most recent payment made by him, and the current unpaid balance is approximately \$19,053. (GE 2, at 2; Tr. at 40) In June 2019, he declared that he would reach out to the creditor to reach the “amicable solution.” (GE 1, at 35) In March 2020, he indicated that he hoped to be able to resolve the account within the next three years. (Answer to the SOR, at 4) However, he was contacted by a collection agent in April 2020, and he agreed to make a \$500 payment in May 2020. (AE B) That payment was never made. (Tr. at 41) Despite the fact that the account was closed, Applicant has retained the vehicle, and currently uses it. (Tr. at 35, 38) The account has not been resolved.

SOR ¶ 1.b. refers to a credit-card account opened in April 2015 that became delinquent in September 2017, and approximately \$10,393 was charged off. (GE 1, at 34; GE 2, at 2) In May 2019, a Garnishment Summons was issued in the amount of \$10,524, and another such summons was issued in January 2020 in the amount of \$5,567. (AE A) In June 2019, Applicant claimed to be making \$500 per paycheck. (GE 1, at 34) In March 2020, he stated that the account would be paid in full by the end of July 2020. (Answer to the SOR, at 5) He submitted some documentation supporting eight payments, totaling approximately \$3,637 made on July 15, 2020, but he denied that he had made payments in the amounts reported. (AE C; GE 5; Tr. at 45) As of a week before the August hearing, the remaining unpaid balance was \$1,718. (AE G) He claimed that he attempted to call the collection agent, but has been unsuccessful. He has not written the creditor or the collection agent. (Tr. at 48) The account was seemingly in the process of being resolved, but Applicant has failed to furnish documentation reflecting his actual undisputed payments.

SOR ¶ 1.c. refers to a jewelry store charge account opened in August 2016 with a \$7,000 credit limit that became delinquent with a past due balance of \$358 in September 2018, and was eventually sold to a credit purchaser of delinquent debt. (GE 2, at 2; GE 3, at 2) In March 2020, Applicant stated he would pay one-half of the account by March 13, 2020, with the remainder to be paid by March 27, 2020. (Answer to the SOR, at 6) He actually made his first payment, for \$180 in September 3, 2020, and a second payment, for \$178, on September 8, 2020, both of which took place after the Notice of Hearing was already issued. (AE F) The account has been resolved.

After his period of unemployment ended in September 2018, Applicant’s new employer started him out at \$63,000 per year, and by the time he left that employer in May 2020, he was making \$70,000 per year. He reported his current annual salary to be \$92,000. (Tr. at 35) Although Applicant was furnished a blank Personal Financial Statement to be completed and submitted by September 2020, he failed to do so. (Tr. at 67) Therefore, it is not known what his current financial resources may be because he did not report his current net monthly income or monthly expenses. He reported a monthly

remainder of \$1,800 that might be available for discretionary spending or savings. He estimated that he currently has \$3,000 in savings. (Tr. at 51-53) 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.

Applicant had three delinquent accounts totaling approximately \$29,454, claiming that because of a period of unemployment, he did not have sufficient funds to maintain them in a current status. When the SOR was issued in February 2020, all three accounts were still delinquent, and Applicant had only made one voluntary payment to one creditor in October 2018, and a number of involuntary garnishment payments to another creditor. 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) partially applies, but none of the other conditions apply. 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)). Applicant attributed his financial problems to only one factor: unemployment from September 2017 until September 2018.

One of the accounts, for \$21,944, was charged off in June 2018, and he made only one \$3,240 payment to the creditor in October 2018. Following the charge-off, and since that time, he has made no other payments, despite promising to do so, while continuing

to use the vehicle for which the loan was opened. Another account for approximately \$10,393 was also charged off, but despite securing employment in September 2018, he offered no evidence of any voluntary payments to the creditor. Instead, in May 2019, a Garnishment Summons was issued in the amount of \$10,524, and another such summons was issued in January 2020 in the amount of \$5,567. Involuntary (garnishment) payments were made, but the documentary evidence of the dates and amounts of those payments were disputed by Applicant. He finally addressed the third delinquent account, the one for \$358, but only did so after the Notice of Hearing had been issued.

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 this instance, Applicant failed to furnish evidence of a reasonable plan and concomitant timely conduct.

Applicant managed to resolve only one of his three delinquent accounts – starting to do so only after the SOR was issued, and after the Notice of Hearing had been issued. 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)).

The nature, frequency, and recency of Applicant's continuing financial difficulties, and his failure to voluntarily and timely resolve them until his wages were garnished (in one instance), or until the SOR was issued (in another instance), or not at all (in another instance), is sufficient to conclude that his financial difficulties were not infrequent and they are likely to remain unchanged. Applicant completed his SF 86 in June 2019; promised to resolve his delinquent debts within self-created timeframes; the SOR was issued in February 2020; and he was subsequently offered the opportunity to submit documentation regarding his delinquent accounts' status. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him.

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, Applicant's repeated promises to make payments were not timely fulfilled.

The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

In the absence of substantial 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. 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 28-year-old employee of a defense contractor. He has been serving as an acquisition management analyst with his current employer since May 2020. He previously worked as a business analyst for another contractor from September 2018 until May 2020. He was laid off and unemployed from September 2017 until September 2018. A 2009 high school graduate, he received a bachelor's degree in 2014. He finally paid off one of his three creditors.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant had three delinquent accounts totaling approximately \$29,454. His failure to voluntarily and timely resolve them until his wages were garnished in one instance associated with the vehicle for which he stopped making payments, while continuing to use it; or until the SOR was issued in another instance associated with a credit card; and not at all until after the Notice of Hearing was issued in another instance related to a jewelry store account, is sufficient to conclude that his financial difficulties were not infrequent and they are likely to remain unchanged.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's current track record is poor at best, delaying significant resolution efforts, supported by documentation, well after he obtained employment with a reported annual salary of \$92,000. 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. and 1.b.: | Against Applicant |
| Subparagraph 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