



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



In the matter of: )  
)  
) ISCR Case No. 20-01510  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea M. Corrales, Esquire, Department Counsel  
For Applicant: *Pro se*

03/18/2021

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**Decision**

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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 October 27, 2017, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On May 31, 2019, 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.

On September 9, 2020, Applicant responded to the SOR and 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 30, 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 13, 2021. His response was due on February 12, 2021. Applicant timely responded to the FORM, and he submitted a statement and several documents, to which there was no objection. The case was assigned to me on February 25, 2021.

Upon reviewing the case file, especially Applicant's Response to the FORM, it was noted that while Applicant claimed to have submitted descriptions of "actions taken to remediate delinquencies" as well as "documentary evidence demonstrating mitigation", the information described consists merely of Applicant's reported actions unsupported by documentation. Applicant referred to confirmation numbers associated with claimed payments, but he failed to submit documentation such as bank registers, bank statements, or receipts or statements from the creditors, or more recent credit reports.

Since I was aware that the website for DOHA had been down for various periods, thus possibly limiting Applicant's understanding of what constitutes necessary documentation, in order to afford him a fair opportunity to address the issues present in this case, on March 8, 2021, I issued a Case Management Order, reopening this matter for the limited purpose to enable him to submit the documentation that will support his contentions that the payments have been made, and that the accounts have been resolved. Applicant timely submitted several documents to support his contentions that he contacted his creditors, and that he had made payments to most of his creditors. In the absence of objections by the Government, those documents have been marked as Applicant Exhibits (AE) A and AE B, and accepted into evidence.

### **Findings of Fact**

In his response to the SOR, Applicant admitted, without comment, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.d.). Applicant's admissions 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 30-year-old independent subcontractor of a defense contractor. He has been serving in logistics with his current sponsor since September 2019. He previously served in a variety of full-time or part-time positions with the Army National Guard (ANG) as an inactive reservist, a temporary technician, and a dual status federal technician. His most recent grade was that of sergeant (E-5). A 2009 high school graduate, he continued his education, earning credits, but to date, he has not received a degree. It is unclear if he was ever granted a security clearance, for in his SF 86 he denied ever receiving one, but Department Counsel asserted, without documentary verification, that he had been granted a clearance in 2008. He was married in 2017. He has two children, born in 2018 and 2020.

## **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (SF 86, dated October 27, 2017); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated November 20, 2019); and Item 4 (Equifax Credit Report, dated December 22, 2020).

Applicant reported that he was unemployed from November 2013 until January 2014, but that was not the focus of his financial difficulties. He noted that during the period 2017 until 2019, several factors contributed to his financial problems: his wife stopped working upon becoming pregnant; she subsequently remained home to care for their child; and his financial situation became very inconsistent when he was with the ANG when there were periods of insufficient funding to keep him in a settled or paid routine. A number of accounts became delinquent due to his inability to keep them in a current status. Applicant referred to unspecified district court activities associated with several of the accounts, but it remains unclear if any of those actions resulted in judgments against him. As a result of his increasing financial burden, he purportedly sought the assistance of a debt-resolution company. It remains unclear what services, if any, that company performed for him for Applicant failed to submit any documentation to support his claim.

In February 2021, he also obtained a debt-consolidation loan, in the amount of \$20,000, to enable him to address his debts. (AE A (Experian Credit Report, dated March 12, 2021, at 5)) However, as noted by Department Counsel, it is unclear if Applicant has yet made any monthly payments on the loan as, once again, he failed to submit any documentation other than a monthly budget to indicate that payments are being made.

The SOR alleged four delinquent accounts totaling approximately \$24,785, as set forth as follows:

SOR ¶ 1.a. is a credit-card account with an unpaid balance of \$2,523 that was charged off in March 2019, after being 120 days past due. (Item 5, at 8; Item 4, at 2; Item 3, at 52-53; Extract of Equifax Credit Report, attached to Response to the FORM) In his Answer to the SOR, Applicant admitted the allegation without comment, but in his Response to the FORM, he claimed he paid off the creditor in February 2021 and resolved

the account. He subsequently submitted a recent credit report that reported the account status as “paid, was a charge-off.” (AE A, at 11) The account has been resolved.

SOR ¶ 1.b. is a credit-card account with an unpaid balance of \$4,491 that was charged off in April 2019, after being 120 days past due. (Item 5, at 8; Item 4, at 3; Item 3, at 54-55; Extract of Equifax Credit Report, attached to Response to the FORM) In his Answer to the SOR, Applicant admitted the allegation without comment, but in his Response to the FORM, he claimed that his efforts to address the account with the collection agent were rebuffed because it was no longer the holder of the account, and they are pending an assignment to a “recoupment company.” While the account remains unresolved, Applicant is credited with attempting to resolve it.

SOR ¶ 1.c. is a credit-card account with an unpaid balance of \$4,522 that was charged off in August 2018, after being 120 days past due. (Item 5, at 8; Item 4, at 3; Item 3, at 53-54; Extract of Equifax Credit Report, attached to Response to the FORM) In his Answer to the SOR, Applicant admitted the allegation without comment, but in his Response to the FORM, he claimed he paid off the creditor in February 2021 and resolved the account. He subsequently submitted a recent credit report that reported the account status as “paid, was a charge-off.” (AE A, at 15) The account has been resolved.

SOR ¶ 1.d. is an unspecified type of account with an unpaid balance of \$13,249 that was charged off in December 2017, after being 120 days past due. (Item 5, at 9; Item 4, at 3; Extract of Equifax Credit Report, attached to Response to the FORM) In his Answer to the SOR, Applicant admitted the allegation without comment, but in his Response to the FORM, he claimed he paid off the creditor in February 2021 and resolved the account. He subsequently submitted a recent credit report that reported the account status as “paid, was a charge-off.” (AE A, at 18) The account has been resolved.

It is noted that despite Applicant’s claimed inability to maintain the accounts alleged in the SOR in a current status because of insufficient funds to do so, he managed to take three personal trips to visit his wife’s family in Poland in 2017, 2018, and 2019 for varying periods between 6-20 days. (Item 3, at 42-45).

Applicant’s Personal Monthly Budget reports \$4,400 in current net monthly income; \$3,513 in monthly expenses, including \$829 for the consolidation loan; and a monthly remainder of \$887 that might be available for discretionary spending or savings. (Response to the FORM) There is no evidence of financial counseling. Based on his current monthly budget, Applicant is currently in a better position financially than he had been.

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual

is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

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

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

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

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## **Analysis**

### **Guideline F, Financial Considerations**

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The SOR alleged four delinquent accounts totaling approximately \$24,785. Applicant claimed that he had insufficient funds to maintain those accounts in a current status. In his Answer to the SOR, he admitted that as of the date the SOR was issued (September 11, 2020), the accounts were still delinquent. AG ¶¶ 19(a) and 19(c) and have been established. With regard to being unwilling to satisfy his debts regardless of an ability to do so, the fact that he had spent money to take several trips to Poland during

his period of reported insufficient funds, leads to a conclusion that AG ¶ 19(b) has 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) and 20(d) fully or partially apply, but 20(c) does not 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 issues to a variety of factors: his wife stopped working upon becoming pregnant; she subsequently remained home to care for their child; and his financial situation became very inconsistent when he was with the ANG when there were periods of insufficient funding to keep him in a settled or paid routine. It is troubling that although Applicant claimed that he had insufficient funds to maintain his accounts in a current status, he managed to take several personal trips to Poland in 2017, 2018, and 2019.

Based on the evidence, it appears that Applicant seemingly ignored his delinquent accounts until five months after the SOR was issued. An applicant who begins to resolve his 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). Applicant completed his SF 86 in October 2019; and the SOR was issued in September 2020. Those two steps of the security clearance review process placed him on notice of the significance of the financial issues confronting him. He has made an unverified statement that he had previously resolved one non-SOR

account with one creditor. He also provided verified proof that he had resolved three of the four SOR-related debts, but he delayed any verified resolution efforts regarding those debts until February 2021.

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 resolved three of the four accounts alleged in the SOR, and his efforts with respect to the fourth account have been rebuffed by the collection agent.

The nature, frequency, and recency of Applicant's former financial difficulties, and his general failure to voluntarily and timely start to resolve them until the SOR was issued, is sufficient to conclude that his financial difficulties were not infrequent. While the timeliness of his efforts to resolve his debts is not good, the subsequent substantial positive and successful efforts are very good. His strong showing that most of the accounts are now resolved, or about to be resolved, along with the amount of money that is available for discretionary spending or savings each month, indicates that the financial problems are substantially in the past.

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."

(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's delayed actions under the circumstances 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 considerations. His history of delinquent debt is documented in his earlier credit reports. The SOR alleged four charged-off accounts totaling approximately \$24,785. There is no evidence that Applicant made any attempts to resolve them until well after the SOR was issued. During the period of his financial difficulties, he still managed to take several trips to Poland.

The mitigating evidence under the whole-person concept is simply more substantial, but still not exactly compelling. Applicant is a 30-year-old independent subcontractor of a defense contractor. He has been serving in logistics with his current sponsor since September 2019. He previously served in a variety of full-time or part-time positions with the ANG as an inactive reservist, a temporary technician, and a dual status federal technician. His most recent grade was that of sergeant (E-5). A 2009 high school graduate, he continued his education, earning credits, but to date, he has not received a degree. Department Counsel asserted that Applicant had been granted a clearance in 2008. While Applicant offered no verifiable evidence that he had made efforts to resolve his delinquent debts before the SOR was issued, he did subsequently submit documentation that supported his assertions that he has already resolved three of the four debts alleged in the SOR. He continues to attempt resolution with the one remaining creditor. His finances have improved to the point where he now has a monthly remainder available for discretionary spending or savings.

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, though delayed, is positive and encouraging, although it did not commence before the SOR was issued. This decision should serve as a warning that Applicant’s failure to more timely and aggressively resolve the one remaining debt for \$4,491, or to make timely monthly loan-consolidation payments, may adversely affect his future eligibility for a security clearance as security officials may continue to monitor his finances. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted.

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.d.	For Applicant

## **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.

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ROBERT ROBINSON GALES  
Administrative Judge