



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00756
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esquire, Department Counsel
For Applicant: *Pro se*

03/24/2021

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding Financial Considerations. Eligibility for a security clearance is denied.

Statement of the Case

On January 22, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On June 1, 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.

On June 12, 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 January 4, 2021, 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, 2021. His response was due on February 21, 2021. Applicant timely responded to the FORM, attaching a one-page statement, as well as an email stream which contained immaterial information. Department Counsel did not object to the documents, and I accepted them into evidence. The case was assigned to me on March 12, 2021.

Findings of Fact

In his Answer to the SOR, Applicant admitted two of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.b. and 1.d.). His comments with respect to both his admissions and his denials 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 52-year-old employee of a defense contractor. He has been serving as site lead with his current employer overseas since February 2006. In addition, he had been serving in various positions with the U.S. Army on active duty or the inactive reserve, or the Army National Guard in the inactive reserve, from January 1991 until May 2016. Upon completion of his active duty, he was honorably discharged. He received a bachelor's degree in 2002. He was granted a secret clearance in 1991, and it was renewed in 2001. In 2007, he was also granted access to Secret Compartmented Information (SCI). He was married in 1991 and divorced in 2017. He married again in 2018. He has four children, born in 1995, 1998, 2002, and 2004, as well as one step-child, born in 2009.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 16, 2018); Item 5 (Equifax Credit Report, dated March 25, 2019); Item 6 (Equifax Credit Report, dated December 30, 2020); Item 7 (Enhanced Subject Interview, dated October 5, 2018); and Item 1 ((TransUnion Credit Report, dated June 8, 2020), attached to Applicant's Answer to the SOR).

In October 2018, during an interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant described his overall financial situation as “ok.” He contended that, with the exception of his student loans, all of his bills were current. (Item 7, at 6). He attributed his financial problems to a variety of factors: his separation and divorce from his former wife, her use of a joint account, and the fact that his wages were garnished for child support. (Item 7, at 5-6)

The SOR alleged six delinquent accounts that were placed for collection, totaling approximately \$76,080, as set forth as follows:

SOR ¶ 1.a. refers to a student loan with an unpaid balance of \$61,735 that was past due in January 2018. (Item 4, at 6) During his OPM interview, he acknowledged that he had stopped making payments on the loan when his funds were garnished for child support. It was his intention to resume making his payments on the student loan when his divorce lawyer’s fees were paid off in February 2019. (Item 7, at 5) However, in his Answer to the SOR, Applicant noted that the account was no longer on his credit report. (Item 2) His future intentions are now unclear. The account has not been resolved.

SOR ¶¶ 1.b. through 1.d. refer to unpaid medical bills for \$564, \$264, and \$217 that were incurred while using military hospitals overseas, and they were past due in June 2015. (Item 4, at 6) During his OPM interview, he contended that all of the bills had been paid in full when he received them, and that it was unclear why they still appeared on his credit report. (Item 7, at 5-6) However, in his Answer to the SOR, he admitted that two of the bills remained unpaid, and that the one for \$264 was no longer on his credit report. (Item 2) His future intentions are now unclear. The accounts have not been resolved.

SOR ¶ 1.e. refers to a credit-card account with an unpaid balance of \$9,189 that was charged off in January 2012. (Item 4, at 7) During his OPM interview, he contended that it was a joint account that was used by his ex-wife, and that he had requested that the creditor remove his name from the account. (Item 7, at 5) In fact, the account is an individual one in his name only. (Item 4, at 7) In his Answer to the SOR, Applicant noted that the account was no longer on his credit report. (Item 2) His future intentions are now unclear. The account has not been resolved.

SOR ¶ 1.f. refers to a credit-card account with an unpaid balance of \$4,111 that was charged off. (Item 7, at 5) During his OPM interview, he contended that it was an account that he shared with his ex-wife, but he was unable to continue making payments because of his child-support obligations. (Item 7, at 5) In his Answer to the SOR, Applicant noted that the account was no longer on his credit report. (Item 2) His future intentions are now unclear. The account has not been resolved.

Other than Applicant’s unverified contentions regarding his efforts to resolve certain delinquent accounts, there is no documentary evidence, such as repayment plans, cancelled checks, bank account registers, receipts from creditors, or garnishment orders to support that he has made any efforts to address any of his delinquent accounts.

During his OPM interview, Applicant reported an annual salary of \$72,000, in addition to an annual \$24,100 housing allowance. Also, he received \$19,236 for annual vehicle and gasoline, for a total of \$115,336. He did not report his current monthly expenses or any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of financial counseling. In the absence of additional financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)) As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

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

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

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

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the

burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

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

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

Analysis

Guideline F, Financial Considerations

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

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

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

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

The SOR alleged six delinquent accounts that were placed for collection, totaling approximately \$76,080. Although he initially claimed that three of the accounts had been resolved, as of the date he responded to the FORM, he had not submitted documentary evidence to show that he had resolved any of the delinquent accounts alleged in the SOR. AG ¶¶ 19(a) and 19(c) and have been established. Instead of following through in attempting to resolve the accounts, Applicant has relied on the argument that some of the accounts were charged off or they are no longer in his most recent credit report. With a substantial annual income of \$115,336, it appears that he has been unwilling to satisfy his debts, even those of less than \$300, regardless of an ability to do so, and AG ¶ 19(c) has also been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) minimally applies, but none of the other conditions apply. A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)). The nature, frequency, and recency of Applicant's continuing financial

difficulties, and his failure to voluntarily and timely resolve his delinquent accounts, make it rather easy to conclude that it was not infrequent and it is likely to remain unchanged, much like it has been for several years. He attributed his financial problems to a variety of factors: his separation and divorce from his former wife, her use of a joint account, and the fact that his wages were garnished for child support. As noted above, he failed to specify the negative impact those factors had on his finances. Paying child support is not beyond Applicant's control: you father a child, and you are expected to support the child.

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

Applicant has seemingly "justified" his inaction with regard to several of his delinquent accounts because they are no longer reported on his credit report. A charged-off debt is normally more than six months past due and unlikely to be paid in the near future. The creditor's accounting decision to charge off the debt does not affect the obligation to pay what is owed. Eventually the charged-off debts will be dropped from his credit report.

"[T]hat some debts have dropped off his credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. (Title 15 U.S.C. § 1681c. See Federal Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.) Debts may be dropped from a credit report upon dispute when creditors believe the debt is not going to be paid, a creditor fails to timely respond to a credit reporting company's request for information, or when the debt has been charged off. Applicant's failure to provide a plan to resolve the charged-off debts on his credit report precludes mitigation of those debts in this case.

Based on the evidence, it appears that Applicant intentionally chose to ignore his delinquent accounts even after he was interviewed by OPM. 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 January 2018; underwent his OPM interview in October 2018; and the SOR was issued in June 2020. Each step of the security clearance review process placed him on notice of the

significance of the financial issues confronting him. Other than his unverified claims that he had previously paid off three accounts; had his income garnished for child support; and intended to make payments on his student loans after he paid off his divorce attorney in February 2019, he offered zero documentary evidence to either support his claims, or to reflect that he had made any efforts to resolve his delinquent accounts.

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.

There is no evidence of financial counseling or a budget. With a substantial annual income of \$115,336, it remains difficult to determine why he has not attempted to resolve his delinquent accounts, or if he is currently in a better position financially than he had been. Applicant's actions, or inaction, under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial concerns. Applicant is a 52-year-old employee of a defense contractor. He has been serving as site lead with his current employer overseas since February 2006. In addition, he had been serving in various positions with the U.S. Army on active duty or the inactive reserve, or the Army National Guard in the inactive reserve, from January 1991 until May 2016. Upon completion of his active duty, he was honorably discharged. He received a bachelor's degree in 2002. He was granted a secret clearance in 1991, and it was renewed in 2001. In 2007, he was also granted access to SCI.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has six delinquent accounts that were placed for collection, totaling approximately \$76,080. Although he initially claimed that three of the accounts had been resolved, as of the date he responded to the FORM, he had not submitted documentary evidence to show that he had resolved any of the delinquent accounts alleged in the SOR. Instead of attempting to resolve the accounts, Applicant has relied on the argument that some of the accounts were charged off or they are no longer in his most recent credit report. With a substantial annual income of \$115,336, it appears that he has been unwilling to satisfy his debts, even those of less than \$300, regardless of an ability to do so.

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 track record is extremely poor at best. 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).

