



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



In the matter of:)
)
) ISCR Case No. 20-01379
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esquire, Department Counsel
For Applicant: *Pro se*

07/09/2021

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 July 25, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On September 11, 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 an unspecified date, thought by Department Counsel to be September 25, 2020, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on March 8, 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 March 29, 2021. His response was due on April 28, 2021. Applicant timely responded to the FORM, and he submitted a statement to which there was no objection. The case was assigned to me on May 4, 2021. The record closed on April 28, 2021.

Findings of Fact

In his response to the SOR, Applicant admitted all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.c.). Applicant's admissions and 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 46-year-old employee of a defense contractor. He has been serving as a senior field support coordinator with his current sponsor since July 2019. He previously served as a senior telecom project coordinator with another employer from March 2009 until July 2019. A 1993 high school graduate, he attended a university for several years earning college credits, but no degree. He has never served with the U.S. military. He was initially granted a secret clearance in 2002, and it was renewed in 2009. He reported that he has never been married, and that he had no children, but during an interview with an investigator from the U.S. Office of Personnel Management (OPM) in August 2019, he acknowledged having two children, born four months apart in 2010.

Financial Considerations

General source information pertaining to the financial issues discussed below can be found in the following exhibits: Item 7 (Chapter 7 Bankruptcy Petition, filed June 24, 2010); Item 6 (Court Record of Bankruptcy Filings, dated May 6, 2020); Item 5 (Chapter 7 Bankruptcy Petition, filed May 22, 2019); Item 3 (SF 86, dated July 25, 2019); Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 7, 2019); and Item 8 (Enhanced Subject Interview, dated August 14, 2019).

Applicant has a history of financial difficulties going back over a decade that have resulted in many accounts becoming delinquent. The SOR alleged three financial issues regarding bankruptcies, as set forth below:

In June 2010, he filed a voluntary petition seeking bankruptcy protection under Chapter 7 of the U.S. Bankruptcy Code. (Item 2, at 1) He reported approximately \$257,986 in liabilities with creditors holding secured claims (state tax lien; a judgment lien; a vehicle; and a mortgage); \$4,000 in liabilities with creditors holding unsecured priority claims (federal income tax); and \$69,137 in liabilities with creditors holding unsecured nonpriority claims (various commercial accounts; credit cards; a time-share; and student loans). At the time, he reported an average net monthly income of approximately \$2,572, and an identical amount in monthly expenditures. He reaffirmed the mortgage debt, but because this was considered as a no-asset bankruptcy, most of his other debts were discharged on October 14, 2010. (Item 7)

Between December 2010 and January 2016, Applicant filed for bankruptcy protection under Chapter 13 of the U.S. Bankruptcy Code on seven occasions. On each occasion, the case was dismissed. (Item 2, at 1; Item 6) He made no assertions, and offered no documentation, to support any conclusion that the Trustees involved in any of the Chapter 13 filings had completed a payment plan, received funds from Applicant, or made any payments to any creditors. Furthermore, there were no assertions by Applicant that he had paid the Trustees any funds. Instead, he stated that his intention for filing under Chapter 13 “was to help retain all of [his] assets house, cars, boat and other assets that belong to [him].” (Response to FORM)

In May 2019, he again filed a voluntary petition seeking bankruptcy protection under Chapter 7 of the U.S. Bankruptcy Code. (Item 2, at 2) He reported approximately \$199,829 in liabilities with creditors holding secured claims (a mortgage); and \$99,956 in liabilities with creditors holding unsecured priority claims (domestic support obligations to two separate women; commercial accounts; credit cards; and student loans). At the time, he reported an average net monthly income of approximately \$1,856, and \$2,631 in monthly expenditures, leaving him with a deficit of approximately \$775. On August 30, 2019, because this was considered as a no-asset bankruptcy, most of his debts were discharged. (Item 5) During his OPM interview, Applicant estimated that his liabilities totaled around \$10,000, and they were purportedly caused because of the expenses he was left with following his father’s funeral costs. (Item 8, at 5) His reason for filing under Chapter 7 was “to remove the debts and give [himself] a fresh start to rebuild and reestablish good credit.” (Response to FORM)

Applicant acknowledged that in addition to those funeral expenses, he charged his travel, clothing, jewelry, and dining out on his credit cards to the point where they became “maxed out.” (Item 8, at 5) Nevertheless, he denied that his accounts were delinquent before he filed for bankruptcy, claiming, instead, that his attorney had advised him to stop paying his creditors. (Item 8, at 5) He acknowledged that he had over-extended himself financially, and did not think he would be able to pay his debts, so he filed for bankruptcy. (Item 8, at 9) With respect to his travel expenses, between August 2015 and April 2019, Applicant took several international trips to Mexico (three occasions), as well as trips to Jamaica, Barbados, Belize, Honduras, and Costa Rica. (Item 3, at 22-43), with his most recent trip occurring in April 2019 – one month before he filed his May 2019 bankruptcy petition.

As of May 2019, Applicant owed over \$58,587 in subsidized student loans and over \$25,739 in unsubsidized student loans. (Item 2) His current net monthly income and monthly expenses are not known. It is also unknown if he has a monthly remainder available for discretionary spending or savings. Furthermore, there is no evidence of financial counseling or a budget. Accordingly, it is difficult to determine if Applicant is currently in a better position financially than he had been, or if he has returned to his earlier spendthrift ways.

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 two Chapter 7 bankruptcies (October 2010 and May 2019), as well as seven Chapter 13 bankruptcies between December 2010 and January 2016. He acknowledged that he had over-extended himself financially, by charging his travel, clothing, jewelry, and dining out on his credit cards to the point where they became “maxed out,” and did not think he would be able to pay his debts, so he filed for bankruptcy. Between August 2015 and April 2019, he took several international trips. Based on his own description of events, it appears that while he may have at several points had an inability to satisfy at least some of his debts, there were also times when he had the ability to satisfy some of his debts, but chose not to do so in anticipation of filing for bankruptcy under Chapter 7. AG ¶¶ 19(a), 19(b), and 19(c) have 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 because of the unanticipated expenses associated with his father's funeral, 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 misused his credit cards – essentially unlimited spending on jewelry, international travel, and dining out – without limitation, at least until his credit cards were “maxed out.” As a result, some accounts became delinquent, or Applicant thought the balances were too high for him to even attempt to resolve them. At various times, he had a tax lien for unpaid taxes; he owed federal income taxes; and he was behind on domestic support obligations to two women. Based on the evidence, it appears that Applicant simply led the good life on credit, but ignored his accounts until such time that he sought bankruptcy protection from his creditors. He was successful in 2010 and 2019, when most of his liabilities were discharged. In between those Chapter 7 discharges, he tactically filed for bankruptcy protection under Chapter 13 seven times, only to have those bankruptcies dismissed.

Applicant has displayed a disinterest in paying his creditors for the items and services he received. His reason for filing under Chapter 13 was to help retain all of his assets – house, cars, boat and other assets – that belonged to him. His reason for filing under Chapter 7 was to remove the debts and give himself a fresh start to rebuild and reestablish good credit. He made no assertions, and offered no documentation, to support any conclusion that the Trustees involved in any of the Chapter 13 filings had completed a payment plan, received funds from Applicant, or made any payments to any creditors. There were no assertions by Applicant that he had paid the Trustees any funds. Applicant has a security clearance and was aware that financial issues could present a problem for him when the time for renewal arose. In an effort to minimize his difficulties, he filed for bankruptcy again in May 2019, just months before he completed his SF 86. 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).

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 chose, again, to avoid responsibility for his debts by simply filing for bankruptcy under Chapter 7. Repeatedly walking away from legitimate debts incurred by living the “good life” – traveling internationally, dining out, and maxing out credit cards without restraint – is worse than making hollow promises to pay debts in the future without any effort to do so.

The nature, frequency, and recency of Applicant’s financial difficulties, and his repeated general failure to voluntarily and timely start to resolve them are sufficient to

conclude that his financial difficulties were not infrequent. The absence of any efforts to resolve his debts short of having them repeatedly discharged under bankruptcy is not reasonable or honorable.

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 absence of any good-faith efforts to resolve his debts, and his repeated reliance in Chapter 7 to have his debts discharged, 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 considerations. Applicant is a 46-year-old employee of a defense contractor. He has been serving as a senior field support coordinator with his current sponsor since July 2019. He previously served as a senior telecom project coordinator with another employer from March 2009 until July 2019. A 1993 high school graduate, he attended a university for several years earning college credits, but no degree. He was initially granted a secret clearance in 2002, and it was renewed in 2009. Most of his accounts were discharged under a Chapter 7 bankruptcy in August 2019.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has a history of over-extending himself financially, living an extravagant lifestyle by charging his travel, clothing, jewelry, and dining out on his credit cards to the point where they became "maxed out." Between August 2015 and April 2019, he took several international trips. At various times, he had a tax lien for unpaid taxes; he owed federal income taxes; and he was behind on domestic support obligations to two women. He led the good life on credit, but ignored his accounts until such time that he sought bankruptcy protection from his creditors. He was successful in 2010 and 2019, when most of his liabilities were discharged. In between those Chapter 7 discharges, he tactically filed for bankruptcy protection under Chapter 13 seven times, only to have those bankruptcies dismissed. His reason for filing under Chapter 13 was to help retain all of his assets – house, cars, boat and other assets – that belonged to him. His reason for filing under Chapter 7 was to remove the debts and give himself a fresh start to rebuild and reestablish good credit. He made no assertions, and offered no documentation, to support any conclusion that the Chapter 13 Trustees had completed a payment plan, received funds from Applicant, or made any payments to any creditors. There were no assertions by Applicant that he had paid the Trustees any funds. Because of his repeated dalliance with bankruptcy, rather than actually making efforts to pay his debts, there are lingering questions and continuing doubts about his current reliability, trustworthiness, and good judgment.

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,

