



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-01883
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esquire, Department Counsel
For Applicant: *Pro se*

05/17/2021

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 April 30, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On February 18, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. He answered those interrogatories on June 16, 2020. On December 14, 2020, the DCSA 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 December 28, 2020, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 1) 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 February 5, 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 February 12, 2021. His response was due on March 14, 2021. Applicant chose not to respond to the FORM, for as of May 4, 2021, no response had been received. The case was assigned to me on May 17, 2021. The record closed on May 4, 2021.

Findings of Fact

In his response to the SOR, Applicant admitted, in part, and denied, in part, 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 42-year-old employee of a defense contractor. He has been serving as an operations teleworker with his current sponsor since sometime after he submitted his SF 86 in April 2018. He is also serving as an enlisted member of the U.S. Army Reserve. He received a bachelor's degree in 2010. He previously served on active duty with the U.S. Army from March 2011 until July 2017, when he was honorably discharged as a sergeant (E-5). During his period of active duty, he was deployed on two occasions: to Afghanistan from April 2013 until December 2013; and to South Korea from March 2016 until October 2016. Upon his discharge from active duty, he continued his service in the inactive reserve. It is unclear if he was ever granted a security clearance, for in his SF 86 he indicated that he had undergone an investigation for a secret clearance, but did not state that one had been awarded to him. He was married in 2014. He has two children, born in 2016 and 2018.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (SF 86, dated April 30, 2018); Item 3 (Enhanced Personal Interview, dated June 14, 2018); Item 4 (Answers to Interrogatories, dated June 16, 2020); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 16, 2019); Item 5 (Equifax Credit Report, dated April 16, 2019); Item

6 (Equifax Credit Report, dated May 32, 2019); and Item 7 (Equifax Credit Report, dated February 7, 2020).

Applicant reported that he was unemployed from May 2009 until March 2011, when he entered active duty, as well as from July 2017, when he left active duty, until at least April 30, 2018, while he was in the inactive reserve. It is unclear what factors led to his financial difficulties as he did not specify any factors except that when he left active duty, he was living on a fixed income from the reserves and his U.S. Department of Veterans Affairs (VA) disability. He stopped paying on his loans, and other than attempting to have his student loans placed on hold, he had not made any attempts to pay them. In June 2018, when he was interviewed by an investigator from the U.S. Office of Personnel Management (OPM), he characterized his finances as not currently in a good state. (Item 3, at 7) He claimed to be embarrassed by having delinquent accounts, and the degree of embarrassment was such that he had not told his wife of their financial situation. He planned to tell her “soon” and intended to seek financial counseling. (Item 3, at 8) Applicant did not subsequently indicate if he had finally told his wife of his financial situation. He also did not state that he had obtained financial counseling.

As of June 2020, when he submitted his answers to the interrogatories, Applicant acknowledged that he had not paid, did not have any payment arrangements, and that he was not making payments on two student loans that were in collection. A third account was charged off. (Item 4, at 4). He added that since he had no contact information for the creditor holding two of the accounts, he was unable to contact them, so he turned to disputing the accounts with Credit Karma. (Item 4, at 6) It should be noted that the mailing address and telephone number of the creditor are listed in his two 2019 credit reports. Applicant failed to submit any documentation to support his contention that he had disputed the accounts, and he failed to furnish a reasonable basis to dispute the legitimacy of the two delinquent accounts.

On March 6, 2020, along with his responses to the interrogatories, Applicant completed a Personal Financial Statement in which he reported \$3,470 in current net monthly income, including his \$1,000 VA disability compensation; \$1,750 in monthly expenses; student-loan debts (claimed to be on an income-based repayment plan) totaling \$87,992 with a scheduled monthly payment of \$1,000, but an actual payment of zero; leaving a monthly remainder of \$1,720 available for discretionary spending or savings. He claimed to have \$17,460 in bank savings. (Item 4). He failed to submit any documentation to support his contention that the student-loan debts were on an income-based repayment plan.

The SOR alleged three delinquent accounts totaling approximately \$52,406, as set forth as follows:

SOR ¶ 1.a. is a student-loan account from a bank with an unpaid balance of \$11,753 that was charged off. (Item 5, at 5) In his Answer to the SOR, Applicant admitted that the account had been charged off, but denied that as of the date the SOR was issued, it was still delinquent. He submitted some documents reflecting that the unpaid balance had decreased to approximately \$8,902; that an offer of settlement had been made by

the creditor willing to accept approximately \$1,335; and an approved payment in that amount was made on September 21, 2020. (Documents attached to Answer to the SOR). The account has been resolved.

SOR ¶ 1.b. is a federal student-loan account with an unpaid balance of \$17,801 that was placed for collection and transferred. (Item 5, at 5; Item 6, at 2; Item 7, at 7). In his Answer to the SOR, Applicant admitted that the account had been delinquent, but denied that as of the date the SOR was issued, it was still delinquent. He submitted some documents reflecting that he had been sued on July 21, 2020, for approximately \$20,852, including accrued interest; Applicant paid \$18,700 on August 28, 2020; and that the suit was dismissed with prejudice on September 3, 2020. (Documents attached to Answer to the SOR). The account has been resolved.

SOR ¶ 1.c. is a federal student-loan account with an unpaid balance of \$22,852 that was placed for collection and transferred. (Item 5, at 5; Item 6, at 2; Item 7, at 7). In his Answer to the SOR, Applicant admitted that the account had been delinquent, but denied that as of the date the SOR was issued, it was still delinquent. He submitted some documents reflecting that he had been sued on July 21, 2020, for approximately \$26,332, including accrued interest; Applicant paid the \$18,700 noted above; and that the suit was dismissed with prejudice on September 10, 2020. (Documents attached to Answer to the SOR). 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, or a choice not to do so, his March 2020 Personal Financial Statement reported a monthly remainder of \$1,720 available for discretionary spending or savings. And, he claimed to have \$17,460 in bank savings. He offered no explanation regarding the source of the funds used to resolve the three SOR-alleged delinquent debts.

Furthermore, there is no evidence of financial counseling, a budget, or a current Personal Financial Statement. Accordingly, it is difficult to determine if Applicant is currently in a better position financially than he had been.

Policies

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

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

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

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

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

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

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not

met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

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

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

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

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

The SOR alleged three delinquent student-loan accounts totaling approximately \$52,406. When Applicant left active duty in July 2017, he was living on a fixed income from the reserves and his VA disability. He stopped paying on his loans, and until September 2020, he did not make any attempts to pay them. In June 2018, he characterized his finances as not currently in a good state. It appears that he was unwilling to satisfy his debts regardless of an ability to do so, especially when he had a monthly remainder of \$1,750 in March 2020. Furthermore, as noted above, it remains unclear if the source of the funds he used to eventually resolve his delinquent accounts was savings, another commercial loan, or a private loan. If it was another loan, that simply changes the identity of the creditors. The uncertainty leads to a conclusion that 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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue

AG ¶¶ 20(b) and 20(d) partially or minimally apply, 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 claimed to be so embarrassed by having delinquent accounts that he had not told his wife of their financial situation. He planned to tell her “soon” and intended to seek financial counseling. It remains unclear if he did either. Based on the evidence, it appears that Applicant ignored his delinquent accounts for approximately two and one-half years after he was questioned by the OPM investigator. He waited approximately seven months after he was issued a set of interrogatories regarding his delinquent student-loan accounts. Only then, three months before the SOR was issued, did he take action to resolve the delinquent accounts, basically at a substantial discount. 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 finally resolved all three of the accounts alleged in the SOR.

The nature, frequency, and recency of Applicant's financial difficulties, and his general failure to voluntarily and timely start to resolve them until substantial investigatory action was taken, is sufficient to conclude that his financial difficulties were not infrequent. The timeliness of his efforts to resolve his debts is not good, and the delay in commencing to do so, is another negative factor. The subsequent positive and successful efforts are good. However, the source of the funds he used to resolve his delinquent accounts is still shrouded in mystery.

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)).

There is no evidence of financial counseling, a budget, or current financial information. Applicant's delayed actions 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 42-year-old employee of a defense contractor. He has been serving as an operations teleworker with his current sponsor since sometime after he submitted his SF 86 in April 2018. He is also serving as an enlisted member of the U.S. Army Reserve. He received a bachelor's degree in 2010. He previously served on active duty with the U.S. Army from March 2011 until July 2017, when he was honorably discharged as a sergeant (E-5). During his period of active duty, he was deployed on two occasions: to Afghanistan from April 2013 until December 2013; and to South Korea from March 2016 until October 2016. Upon his discharge from active duty, he continued his service in the inactive reserve. Applicant finally, after a multi-year delay, resolved his three delinquent student-loan accounts three months before the SOR was issued.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant had three delinquent student-loan accounts totaling approximately \$52,406. When he left active duty, he was living on a fixed income from the reserves and his VA disability. He stopped paying on his loans, and until September 2020, he did not make any attempts to pay them. In June 2018, he characterized his finances as not currently in a good state. He claimed to be so embarrassed by having delinquent accounts that he had not told his wife of their financial situation – a potential trigger to blackmail. He planned to tell her “soon” and intended to seek financial counseling. It remains unclear if he did either. Three months before the SOR was issued, but approximately two and one-half years after he was questioned by the OPM investigator, and approximately seven months after he was issued a set of interrogatories regarding his delinquent student-loan accounts, Applicant finally addressed those delinquent accounts. Because he failed to offer sufficient information and commentary regarding his current finances; the reason why he failed to contact his creditors for such a lengthy period; the reason why he failed to make even minimum payments, especially when he had a monthly remainder of \$1,750 as far back as March 2020, and possibly even before that time; as well as the source of the funds he used to resolve the three delinquent debts, there are lingering questions if Applicant is currently in a better position

financially than he had been, as well as continuing doubt 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, 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.

While the eventual result with respect to the three alleged delinquent student-loan accounts is good, Applicant’s track record of zero efforts to resolve the debts, the lengthy period of non-contact with his creditors, and complete non-payment until September 2020, is negative and disappointing.

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. through 1.c.	Against 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