



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



In the matter of:)
)
) ISCR Case No. 20-00465
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esquire, Department Counsel
For Applicant: *Pro se*

09/28/2021

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 March 27, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On April 8, 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* (December 10, 2016) (AG), 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 May 21, 2020, Applicant responded to the SOR and he requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on August 19, 2020. Because of protocols associated with the COVID-19 pandemic, no further action was taken to schedule a hearing until the following year. The case was assigned to me on July 2, 2021. A Notice of Hearing by way of a Defense Collaboration Services (DCS) Video Teleconference was issued on August 11, 2021, scheduling the hearing for August 20, 2021. I convened the hearing as scheduled.

During the hearing, Government Exhibits (GE) 1 through GE 4 and Applicant Exhibits (AE) A through AE E were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on August 31, 2021. I kept the record open until August 25, 2021, to enable him to supplement it. Applicant chose not to submit any further documents. The record closed on August 25, 2021.

Findings of Fact

In his Answers to the SOR, Applicant admitted seven of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.e., 1.h., and 1.i.). He denied the two remaining allegations. 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 30-year-old employee of a defense contractor. He has been serving as a tool and fabrication inspector with his current employer since 2019. He previously served as a quality control inspector for other employers from 2011 until 2018. A 2009 high school graduate, he received a technical school certification as a medical assistant in 2011; some college credits, but no degree; and he is currently enrolled in an unspecified science, technology, engineering, and mathematics (STEM) program. He has never served with the U.S. military. He has never held a security clearance. He has never been married.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (SF 86); GE 2 (Enhanced Subject Interview, dated May 2, 2019); GE 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 9, 2019); GE 3 (Equifax Credit Report, dated December 17, 2019); and Applicant's Answer to the SOR (Answer).

Applicant attributed his financial problems to several factors which depleted his financial resources and led to several financial accounts becoming delinquent: in around 2014, his father experienced heart problems and underwent surgeries for which Applicant

paid the expenses; they resided together until 2019, and he paid the rent and for food; he was unemployed for two months in 2017 (during which he received unemployment benefits); he was involved in an automobile accident which totaled his vehicle, but his insurance company refused to cover the damages; he needed transportation to get to work and school so he purchased another vehicle; and his identity was stolen. He failed to submit any documentation to support or verify his contentions with respect to his father's health issues and payments; the insurance issues; or identity theft.

In March 2019, when Applicant completed his SF 86, he acknowledged that there was a delinquent automobile loan since 2012. On May 2, 2019, during an interview with an investigator from the U.S. Office of Personnel Management (OPM), Applicant acknowledged several identified delinquent accounts, but claimed to be unaware of several other described delinquent debts. He contended that he had matured and was now living within his means; budgeting; prioritizing accounts; checking prices before making purchases; and seeking financial advice from friends who are good with their finances. He described his finances as "getting better and improving." He stated an intention to look into those accounts about which he was unaware, and setting up payment arrangements. He denied that his failure to pay his accounts was intentional, and explained that he simply could not keep up with them. (GE 2)

The SOR alleged nine delinquent accounts that were placed for collection, charged off, or for which there was a repossession, totaling approximately \$35,847, as set forth as follows:

SOR ¶ 1.a. refers to an automobile loan with a high credit of \$22,185 made in 2012 that became delinquent in 2013 after the vehicle was totaled but not covered by insurance. In February 2013, \$19,675 was charged off, but the creditor still reports a past-due-balance of \$25,374. (GE 4, at 5; GE 3, at 1; GE 2, at 4-5; Answer, at 1) Applicant acknowledged that he had not even attempted to contact the creditor to resolve the charged-off account for the past five years. (Tr. at 47) The account has not been resolved.

SOR ¶ 1.b. refers to an automobile loan with a high credit of \$19,599 made in 2014 that Applicant voluntarily returned via repossession when his monthly payments "skyrocketed" and he was faced with increased medical expenses for his father. In November 2014, \$4,521 was charged off. (GE 4, at 5; GE 3, at 2; GE 2, at 6; Answer, at 1) Applicant acknowledged that he last contacted the creditor about the account in 2017, but claims he was told that the account had been charged off. (Tr. at 50-51) During the hearing, he stated that he had no intention to pay off the account, "at the moment." (Tr. at 50) The account has not been resolved.

SOR ¶ 1.c. refers to an automobile loan with a high credit of \$10,564 made in 2015 that was involuntarily repossessed in 2018. Applicant claimed that he was late with one monthly payment and that there were "hidden" late-payment fees. He spoke with the creditor, but one morning the vehicle was gone. In January 2019, \$3,061 was charged off. He has not made any effort within the past four years to resolve the account, and he intends to dispute it. (GE 4, at 6; GE 3, at 2; GE 2, at 6; Answer, at 2; Tr. at 54) The account has not been resolved.

SOR ¶¶ 1.d. refers to an automobile insurance account with an unpaid balance of \$756 that was placed for collection in 2019. The account was for one of Applicant's vehicles that he no longer had, but failed to notify the company that he no longer had it to cancel insurance coverage. (GE 4, at 13; GE 3, at 2; Tr. at 54-55) He acknowledged that he had made no efforts to resolve the account until two months before the hearing, and his current intent is to pay it off. He previously disputed the account for unspecified reasons. (GE 3, at 2) He now contends he and the creditor agreed to have monthly payments to commence shortly after the COVID-19 pandemic. (Answer, at 2; Tr. at 56) Applicant offered no documentary evidence to support the existence of a repayment agreement. The account has not been resolved.

SOR ¶ 1.e. refers to medical account – actually referred to by Applicant as a dental account – with an unpaid balance of \$412 that was placed for collection in 2019. (GE 4, at 12; GE 3, at 2; Answer, at 2) Although he initially had no recollection of the account, he did subsequently acknowledge that the delinquency occurred after he was laid off in 2017, and his coverage had lapsed without his knowledge. He acknowledged that he had initially made no efforts to contact the creditor, and then claimed he was unsuccessful in attempting to do so in 2019. (GE 2, at 5; Tr. at 57) Applicant intended to contact the creditor after Memorial Day in 2020 to establish a repayment plan. (Answer, at 2) He never contacted the creditor. (Tr. at 77) Applicant offered no documentation or testimony to verify that such a plan had been established or payments made. The account has not been resolved.

SOR ¶¶ 1.f. and 1.g. refer to two medical accounts with unpaid balances of \$169 and \$132 that were placed for collection in 2019. (GE 4, at 13; GE 3, at 3; GE 2, at 5; Answer at 2-3) Applicant claims he disputed both accounts in 2020 because he believes they resulted from the theft of his identity. (Tr. at 58-60) He offered no documentary evidence to support that identity theft occurred or was reported, or that disputes were actually made. The accounts have not been resolved.

SOR ¶ 1.h. refers to a cellular telephone account with an unpaid balance of \$1,048 that was placed for collection in 2019. He initially denied knowing anything about the creditor or the account, then acknowledged that the creditor "overwhelmed" his account with data charges that were for personal use that he was unaware of, and also claimed he had forgotten about the bills. (GE 4, at 12; GE 2, at 5; Answer, at 3; Tr. at 60-62) It is now his intent to pay the bill off, but he has not made any efforts to do so since he received the first bill because it is lower on his list of priorities. (Tr. at 63; Answer, at 3) The account has not been resolved.

SOR ¶ 1.i. refers to an unspecified type of account – later acknowledged by Applicant to be either a charge card or credit card – with a bank with an unpaid balance of \$374 that was placed for collection in 2014 and eventually sold to a debt purchaser. (GE 4, at 13; GE 2, at 5; Answer, at 3) Applicant denied ever receiving a bill from either the creditor or the debt purchaser. He later claimed that the card had been lost or stolen. (Answer, at 3) He has made no efforts to contact either party, but claims that if the account is valid, he will pay it. (Tr. at 65, 78) The account has not been resolved.

Although he had not resolved any of the SOR-related delinquent accounts, in an effort to reflect his efforts to improve his financial reputation, Applicant submitted documentation to verify either modest payments to other creditors or disputes: an unspecified credit card with a now zero balance (but with a \$40 late charge incurred in August 2021) (AE A); monthly payments to a college for a student loan (AE B); monthly loan payments (AE C); a dispute of an unspecified type of account (AE D); and an account history similar to a check register indicating all monthly expense payments – including rent and utilities – made between August 1, 2020 and August 1, 2021 (AE E).

During the hearing, Applicant estimated that his monthly net income was about \$2,800 to \$2,920; his estimated monthly expenses were substantial reflecting a variety of different expenses; and his remainder was unspecified and dwindling. (Tr. at 68-73) His checking account had less than \$1,000, he had no savings account, and his 401k retirement account had \$19,500. (Tr. at 66-67) During the hearing I requested that Applicant complete and submit to me and Department Counsel a Personal Financial Statement to reflect the specifics of his current net monthly income, monthly expenses, and a monthly remainder available for discretionary spending or savings. (Tr. at 74, 80) He failed to do so.

Applicant has never had financial counseling, and he has no idea about how to obtain it. (Tr. at 76, 79)

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; and

Applicant has nine delinquent accounts that were placed for collection, charged off, or for which there was a repossession, totaling approximately \$35,847. Those accounts became delinquent essentially because of Applicant's inability to maintain them in a current status either because he had insufficient funds to do so, or he had other prioritized accounts and expenses, or that there was identity theft. AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence that Applicant has been unwilling to satisfy his debts regardless of an ability to do so, and AG ¶ 19(b) has not been established.

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

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

counseling service, and there are clear indications that the problem is being resolved or is under control;

(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

None of the mitigating conditions apply. As noted above, Applicant attributed his financial problems to several factors: his father's health issues; his covering those expenses as well as for the rent and for food; his brief period of unemployment; the automobile accident which totaled his vehicle; he needed transportation to get to work and school so he purchased another vehicle; and identity theft. While some of those issues might have increased his expenses for short periods, in the absence of specifics, none of them were largely beyond his control for the long term. He denied that his failure to pay his accounts was intentional, and explained that he simply could not keep up with them. Applicant failed to submit any documentation to support or verify his contentions with respect to his father's health issues and payments; the insurance issues; or identity theft.

In May 2019, during his OPM interview, Applicant contended that he had matured and was now living within his means; budgeting; prioritizing accounts; checking prices before making purchases; and seeking financial advice from friends who are good with their finances. He described his finances as "getting better and improving." He stated an intention to look into those accounts about which he was unaware, and setting up payment arrangements. However, he subsequently acknowledged that he had made no efforts during substantial periods, including several years, to resolve his accounts beyond claiming that he had some unverified future repayment arrangements. He indicated no intent to resolve one automobile loan, at the moment (SOR ¶ 1.b.); two accounts that were supposedly the result of identity theft (SOR ¶¶ 1.f. and 1.g.) were not challenged or reported to authorities; and he said he would contact one creditor to determine if the account was valid (SOR ¶ 1.i). As of the hearing, none of the delinquent accounts had been resolved. Instead, he simply furnished documentation showing that some routine monthly expenses for other accounts were being made.

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.

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

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

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

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, there are some promises, but no actual resolution efforts over lengthy periods. Also, the payment of some normal monthly expenses, to the exclusion of any payments towards the delinquent debts, does not excuse the avoidance of addressing the SOR-related delinquent debts.

There is no evidence of financial counseling or a budget. It remains difficult to determine if Applicant is currently in a better position financially than he had been, especially since he failed to submit the requested Personal Financial Statement. 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 30-year-old employee of a defense contractor. He has been serving as a tool and fabrication inspector with his current employer since 2019. He previously served as a quality control inspector for other employers from 2011 until 2018. A 2009 high school graduate, he received a technical school certification as a medical assistant in 2011; some college credits, but no degree; and he is currently enrolled in an unspecified science, technology, engineering, and mathematics (STEM) program.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has nine delinquent accounts that were placed for collection, charged off, or for which there was a repossession, totaling approximately \$35,847. Three automobiles were repossessed. Applicant acknowledged that he had made no efforts during substantial periods, including several years, to resolve his accounts beyond claiming that he had some unverified future repayment arrangements. As of the hearing, none of the delinquent accounts had been resolved.

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,

