



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



In the matter of:)
)
) ISCR Case No. 20-00112
)
Applicant for Security Clearance)

Appearances

For Government: Dan O'Reilly, Esquire, Department Counsel
For Applicant: *Pro se*

12/07/2021

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 October 20, 2018, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On September 13, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. On September 30, 2019, he responded to those interrogatories. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him another set of interrogatories, some of which requested that he verify the accuracy of a summary of his enhanced subject interview (ESI), dated March 5, 2019. On August 13, 2020, he responded to those interrogatories. On March 9, 2021, the Defense Counterintelligence and Security Agency (DCSA) CAF issued him a Statement of Reasons (SOR) 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 July 20, 2021, 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 DOHA on September 3, 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, he was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. He received the FORM on September 9, 2021. His response was due on October 9, 2021. Applicant chose not to respond to the FORM, for as of October 19, 2021, no response had been received. The case was assigned to me on November 18, 2021.

Findings of Fact

In his Answer to the SOR, Applicant admitted most of the factual allegations (SOR ¶¶ 1.a., 1.c. through 1.g., and a portion of 1.b.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a defense contractor. He has been serving as a quality assurance inspector with his current employer since March 2018. He previously worked for other employers as a dimensional inspector (November 2011 – March 2018) and as a helicopter blade technician (June 2006 – November 2011). He is a 1999 high school graduate. He has never served with the U.S. military. He has never held a security clearance. He has never been married, but has been cohabiting since October 2016. He has two children, born in 2007 and 2017.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (SF 86, dated October 20, 2018); Item 5 (Answers to Interrogatories, dated August 13, 2020), and the ESI, dated March 5, 2019); Item 7 (Equifax Credit Report, dated August 25, 2019); Item 8 (Combined Experian, Equifax, and TransUnion Credit Report, dated December 18, 2018); and Item 2 (Applicant's Answer to the SOR, dated July- 20, 2021).

Applicant self-reported a number of federal income tax issues as well as some financial delinquencies on his SF 86. (Item 3, at 32-37) He reportedly failed to timely file

his federal income tax returns for 2016, 2017, and 2018. In addition, he had seven delinquent accounts at the time the SOR was issued in March 2021.

On March 5, 2019, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM), and he explained the background for his failed filings and delinquent accounts. He acknowledged that he had failed to timely file his federal income tax returns for 2016 and 2017 because of procrastination, and that he intended to file his 2018 federal income tax return by April 2019. With regard to his delinquent accounts, he claimed that in 2010 he and a girlfriend had broken up, leaving him with bills that became an issue. Although he contended that he paid his bills at that time, he did so by “maxing out” all of his credit cards. He makes a better salary from his new employer, and expected to start paying his creditors “soon,” without specifying exactly when. He acknowledged that he had no plans to resolve his financial issues. He characterized his current situation as “good.” (Item 5, at 10-11)

In his response to the first set of interrogatories, he expanded on his explanations. He stated that in order to file his unfiled income tax returns, he needed to find his W-2s from his previous employer. He was not worried about the failures to file those income tax returns because he expected refunds for each year. Although he had indicated to the OPM investigator an intent to file his 2018 income tax return by the end of April 2019, he failed to do so, and now he intended to have all of his delinquent tax returns filed by the end of 2020. As for the delinquent accounts, he explained that his previous salary was insufficient for him to pay his normal bills and also pay the child support that he was recently ordered to pay. The situation “snowballed” and, while his old bills were not forgotten, and he now had a better salary, he was unsure who to talk to about making payments. (Item 4, at 6)

In addition to his failure to timely file his federal income tax returns for 2016, 2017, and 2018, the SOR alleged seven delinquent accounts totaling approximately \$164,906, that were placed for collection, charged off, or for which there was a repossession, as set forth as follows:

SOR ¶ 1.a. refers to Applicant’s failure to timely file his federal income tax returns for the tax years 2016, 2017, and 2018, allegations that he admitted, along with the allegation that he had not done so until August 2020. While he submitted purported copies of his returns, he failed to submit Internal Revenue Service (IRS) – generated tax account transcripts that were repeatedly requested of him. (Item 4, at 3; Item 5, at 2; Item 6) While Applicant eventually overcame his procrastination in August 2020, and the non-filing issue has essentially been resolved, his failure to do so timely still results in a conclusion that the allegation has been proven.

None of the remaining delinquent accounts have yet been addressed by Applicant, with no claimed or verified efforts having been made, and none of them have been resolved: SOR ¶ 1.b. refers to a home mortgage that went into foreclosure when the balance owed was \$147,471, with a past-due balance of \$23,307. (Item 3, at 37; Item 4, at 3; Item 5, at 11; Item 7, at 1; and Item 8, at 5) SOR ¶ 1.c. refers to a credit-card account with an unpaid balance of \$2,843 that was placed for collection and charged off. Applicant

claimed he was not in a position to pay the account, so he prioritized it and then forgot about it. (Item 3, at 34-35; Item 4, at 3; Item 5, at 10; Item 7, at 2; and Item 8, at 6) SOR ¶ 1.d. refers to a credit-card account with an unpaid balance of \$2,349 that was placed for collection and charged off. Applicant didn't remember the card. (Item 3, at 35-36; Item 4, at 3; Item 5, at 10; Item 7, at 2; and Item 8, at 6) SOR ¶ 1.e. refers to a medical account with an unpaid balance of \$1,151 that was placed for collection. (Item 4, at 3; and Item 7, at 2) SOR ¶ 1.f. refers to a gas utility account with an unpaid balance of \$679 that was placed for collection. (Item 4, at 3; Item 7, at 2; and Item 8, at 8) SOR ¶ 1.g. refers to a credit-card account with an unpaid balance of \$10,158 that was placed for collection. He claimed he was not in a position to pay the account, so he prioritized it but still could not pay it. (Item 3, at 36; Item 4, at 3; Item 5, at 10; and Item 8, at 8) SOR ¶ 1.h. refers to an unspecified type of utility account with an unpaid balance of \$255 that was placed for collection. He recollections regarding the account were inconsistent, claiming at one point that he had no knowledge of the account and also stating that it was a utility bill from 2010. (Item 5, at 10; and Item 8, at 8) None of the accounts have been addressed or resolved.

Applicant's current financial situation is unknown, for he has not submitted any information regarding his monthly net income; his estimated monthly expenses; or if he has any monthly remainder available for discretionary spending or savings. There is no evidence of financial counseling, and although he mentioned prioritizing some of his accounts, he failed to submit any documentation such as a written budget to support his contentions.

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. Sep. 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;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state, or local income tax as required.

Applicant failed to timely file his federal income tax returns for the tax years 2016, 2017, and 2018. They were not filed until August 2020, well after the required filing dates. In addition, he had seven delinquent accounts that were placed for collection, charged off, or for which there was a repossession, totaling approximately \$164,906. He claimed that he was initially unable to pay them off because of insufficient funds, but also claimed he would start doing so when his increased salary with his new employer started in 2018. As of March 9, 2021, the date the SOR was issued, while the tax returns had been finally filed, he had not made any claimed or verified efforts to resolve his delinquent accounts. AG ¶¶ 19(a), 19(b), 19(c), and 19(f) 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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

None of the mitigating 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 delayed failure to voluntarily and timely resolve his delinquent federal income tax issues for several years, as well as his continuing failure to address his delinquent accounts, despite repeated promises to do so, make it rather easy to conclude that they were not infrequent. Furthermore, considering his continued failure to address the delinquent accounts despite earning what he called an increased salary, they are likely to remain unchanged in the future. Applicant attributed his financial issues essentially to his procrastination with respect to his federal income tax returns, his girlfriend breaking up with him, and his child-support requirements. Applicant's failure to address his federal income tax issues and his inaction regarding his delinquent accounts, leads to a conclusion that his actions or inaction were irresponsible.

Because of his repeated failure or refusal to comply with the requests that he submit IRS-generated tax account transcripts, and only submitted copies of purported income tax returns for the tax years in question, there is little verifiable evidence of those eventual income tax return filings.

The SOR did not allege that Applicant had failed to comply with requests for him to furnish the IRS-generated tax account transcripts. Nevertheless, Department Counsel argued the significance of his failure to do so. It is essentially a personal conduct or failure to comply with the investigation issue. Unalleged conduct can be considered for certain

purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See *also* ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unalleged failure or refusal to submit those tax account transcripts will be considered only for the five purposes listed above.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, *e.g.*, ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018).

Applicant completed his SF 86 in October 2018; underwent his OPM interview in March 2019; completed his responses to one set of interrogatories in September 2019; and completed his responses to another set of interrogatories in August 2020. He purportedly filed his federal income tax returns in August 2020. The SOR was issued in March 2021; and the FORM was issued in August 2021. Each step of the security clearance review process placed him on notice of the significance of the financial issues confronting him. With respect to his unfiled federal income tax returns, there is little verifiable evidence that he took any action to resolve those issues before the second set of interrogatories was answered by him. With respect to the delinquent debts, even though he self-reported some of his delinquencies in 2018, and discussed them in March 2019, he still has taken no claimed actions to resolve them despite repeated promises to address them. Those promises still remain unfulfilled. By failing to do so, he did not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

The DOHA Appeal Board has observed:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, *e.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The Appeal Board clarified that even in instances where an applicant has purportedly corrected his or her federal tax problem, and the fact that the applicant is now motivated to prevent such problems in the future, does not preclude careful consideration of an applicant's security worthiness in light of his or her longstanding prior behavior evidencing irresponsibility including a failure to timely file federal income tax returns. (See ISCR Case No. 15-01031 at 3 and note 3 (App. Bd. June 15, 2016) (characterizing "no harm, no foul" approach to an Applicant's course of conduct and employed an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

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.

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, 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 41-year-old employee of a defense contractor. He has been serving as a quality assurance inspector with his current employer since March 2018. He previously worked for other employers as a dimensional inspector (November 2011 – March 2018) and as a helicopter blade technician (June 2006 – November 2011). He is a 1999 high school graduate. Applicant candidly acknowledged in his SF 86 that he had continuing federal income tax issues as well as some delinquent accounts. He reportedly eventually filed his federal income tax returns for 2016, 2017, and 2018 in 2020.

The disqualifying evidence under the whole-person concept is simply more substantial. Applicant failed to timely file his federal income tax returns for multiple tax years. Although he was repeatedly requested to submit IRS-generated tax account transcripts to verify that he had actually filed his delinquent income tax returns, he failed or refused to do so. He also had seven delinquent accounts, totaling approximately \$164,906. Although the SOR was issued in March 2021, as of October 2021, when his response to the FORM was required, he had taken no claimed efforts to address any of his delinquent accounts.

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 amended, 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.h: | 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