



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00422
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esquire, Department Counsel
For Applicant: *Pro se*

01/15/2021

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 22, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86). On an unspecified date, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued him a set of interrogatories. Applicant responded to those interrogatories on June 20, 2019. On May 1, 2020, the 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.

In an unsworn and undated statement, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. On November 3, 2020, Department Counsel determined that the submission was in compliance with the Directive. 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 November 3, 2020, 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 November 13, 2020. His response was due on December 13, 2020. Applicant did not respond to the FORM. The case was assigned to me on January 7, 2021.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with brief comments, all of the factual allegations pertaining to financial considerations in the SOR (SOR ¶¶ 1.a. through 1.i.). 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 44-year-old employee of a defense contractor. He has been serving as a production technician II with his current employer since March 2018. He previously worked for a variety of employers as an electronics technician from May 2016 until March 2018; as an electronics technician from January 2016 until May 2016; as a telecommunications specialist from April 2014 until May 2015; and as a field service representative in Afghanistan for different defense contractors from August 2013 until April 2014; and from July 2012 until August 2013. He is a May 1995 high school graduate with some university credits, but no degree. He enlisted in the U.S. Navy (USN) in January 1996, and served on active duty until January 2012, when he was honorably discharged as an E-5. During his active military service, he was deployed to Bahrain, Oman, and Djibouti (September 2004 until March 2005); to Iraq (September 2009 until March 2010); and Bahrain (September 2010 until July 2011). He served in the USN inactive reserve from January 2012 until January 2015. He was granted a secret clearance in 2007. Applicant was married in 2002. He has two children, born in 2002 and 2005, respectively, as well as two stepchildren, born in 1994 and 1996, respectively.

Financial Considerations

General source information pertaining to the financial issues discussed below can be found in the following exhibits: Item 1 (Answer to the SOR, undated); Item 2 (SF 86, dated March 22, 2017); Item 3 (Enhanced Subject Interview, dated July 3, 2018, and

Subject Contact, dated July 17, 2018); Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 4, 2017); Item 6 (Equifax Credit Report, dated April 9, 2019); Item 4 (Responses to Interrogatories, dated June 20, 2019); and Item 5 (Equifax Credit Report, dated October 29, 2020).

Financial difficulties are not new to Applicant. On January 28, 2009, the Department of the Navy (DON) CAF issued him an SOR citing security concerns under Guideline F (Financial Considerations). On April 2, 2009, the DON CAF issued him a favorable determination indicating that he had submitted sufficient mitigating circumstances and explanations to support a favorable decision. Nevertheless, despite the favorable determination, he was strongly cautioned to avoid similar derogatory circumstances. (Item 8, SOR and Favorable Determination)

Applicant went through two separate periods of unemployment. The initial period occurred upon his discharge from active duty, and it lasted from January 2012 until July 2012. During that period, he was supported by unemployment benefits and G.I. Bill funds for school, and he attended a university from March 2012 until October 2012. The second period started when he was terminated due to a communications issue in May 2015, and lasted until January 2016. During that period, he was supported by unemployment benefits, savings, and his wife's part-time employment wages.

In July 2018, Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM). During the interview, he acknowledged only two delinquent accounts. One referred to a repossessed automobile, and the other was related to student loans and G.I. Bill benefits for which there were conflicting facts. As a result of the student loan issue, Applicant explained that his wages were garnished (\$200 per month until February 2017). He did not submit any documentation to support the garnishment. He denied having any other delinquent accounts. When the OPM investigator confronted him with other delinquent accounts, Applicant either claimed to be unaware of the account(s) or recalled some facts regarding other accounts. On July 3, 2018, he described his financial situation as improving, and he claimed that he was able and willing to repay all debts. He contended he was on a budget. He acknowledged that he had never received financial counseling. (Item 3, at 10-11) During a subsequent interview, he recalled additional facts pertaining to some of the accounts he had already discussed. (Item 3, at 13)

In his Answer to the SOR, Applicant acknowledged that he has not always been the most financially responsible person, but he had always tried to live within his means. He attributed his financial problems to having lost a very high paying job in 2015, and his over six-month period of unemployment. He contended that he prioritized his bills, and pushed the bills that were not immediately important off to the side while trying to care for his family of six individuals. When he obtained new employment, it was at a lesser salary, and he fell back even further financially. He borrowed money from his family, and although he repaid most of what he had borrowed, he was still in the process of doing so. (Item 1)

The SOR alleged nine delinquent accounts totaling approximately \$25,711, but it failed to allege any delinquent balances for two of the alleged accounts, and simply

alleged that they had been charged off. In fact, two of the alleged accounts refer to the same account during different phases of existence. The accounts are set forth as follows:

SOR ¶ 1.a. refers to an automobile loan for Applicant's stepson. His stepson stopped making the \$500 monthly payments when he lost his job in January 2015, and although Applicant tried to continue making those payments, when he lost his own job, he too was eventually unable to continue doing so, and the vehicle was voluntarily repossessed in February 2016. The vehicle originally cost \$22,000, and although the account was charged off in the amount of \$17,234 in May 2016, the SOR alleged that the unpaid balance is \$11,847. (Item 5, at 2; Item 6, at 1; Item 7, at 2; Item 3, at 10) In the nearly five years since the repossession, Applicant has made no effort to enter into payment arrangements with the creditor or make any payments. (Item 4, at 2) The account has not been resolved.

SOR ¶ 1.b. refers to an unsecured loan that Applicant's wife took out for her daughter, in Applicant's name, using his power of attorney. Payments stopped being made in June 2016, and the unpaid balance of \$5,056 was charged off. In July 2018, Applicant told the OPM investigator that he was "currently working" with the creditor to set up a payment plan, and that he was willing and able to pay the debt. (Item 5, at 4; Item 6, at 2; Item 7, at 6; Item 3, at 13) Since he made that statement, Applicant has made no effort to enter into payment arrangements with the creditor or make any payments. (Item 4, at 2) The account has not been resolved.

SOR ¶ 1.c. refers to an unspecified type of account with an unpaid balance of \$4,247 that was placed for collection. (Item 5, at 2; Item 6, at 2) Applicant has made no effort to enter into payment arrangements with the creditor or make any payments. (Item 4, at 3) The account has not been resolved.

SOR ¶ 1.d. refers to an unspecified type of retail account with an unpaid balance of \$969 that was placed for collection and transferred or sold to a debt purchaser. (Item 5, at 2; Item 6, at 2; Item 7, at 11) Applicant contended that the account was associated with his daughter's dental services, and that she had repeatedly failed to make payments. (Item 3, at 11) He has made no effort to enter into payment arrangements with the creditor or make any payments. (Item 4, at 3) The account has not been resolved.

SOR ¶¶ 1.e. and 1.h. refer to the same bank-issued credit-card account with an unpaid balance of \$640 that was charged off and sold to a debt purchaser. (Item 5, at 3; Item 6, at 2) Applicant has made no effort to enter into payment arrangements with the creditor or make any payments. (Item 4, at 3) The account has not been resolved.

SOR ¶ 1.f. refers to a medical account with an unpaid balance of \$460 that was placed for collection. (Item 6, at 2) Applicant has made no effort to enter into payment arrangements with the creditor or make any payments. (Item 4, at 4) The account has not been resolved.

SOR ¶ 1.g. refers to a bank-issued credit-card account with a high credit of \$793 that became delinquent and placed for collection. An unspecified balance was charged

off. (Item 5, at 3; Item 6, at 2) Applicant has made no effort to enter into payment arrangements with the creditor or make any payments. (Item 4, at 4) The account has not been resolved.

SOR ¶ 1.i. refers to a student loan or G.I. Bill overpayments with an unpaid balance of \$2,492 that was placed for collection. (Item 7, at 11) It remains unclear if Applicant has made any effort to enter into payment arrangements with the creditor or make any payments. The account has not been resolved.

As noted above, when Applicant was interviewed by the OPM investigator in July 2018, he claimed to be willing and able to pay his delinquent accounts. Nevertheless, he offered no evidence that he had entered into any repayment arrangements or made any payments to his creditors. In June 2019, he submitted a Personal Financial Statement in which he indicated that his net monthly income was \$4,900; his monthly expenses were \$4,055.25; and that his monthly remainder available for discretionary spending or savings was approximately \$845. Despite claiming that he was repaying a family loan, he listed no loans or other debts under the debts section of the Personal Financial Statement. (Item 4) His current financial situation is not known. He claimed that he had a family budget, but he offered no documentation to support his claim. In the absence of additional more recent financial information, it remains difficult to determine if Applicant is currently in a better position financially than he had been.

Policies

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

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

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

reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

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

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. 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; and
- (c) a history of not meeting financial obligations.

The SOR alleged nine delinquent accounts totaling approximately \$25,711, but it failed to allege any delinquent balances for two of the alleged accounts, and simply alleged that they had been charged off. In fact, two of the alleged accounts refer to the same account during different phases of existence. Although Applicant contended in July 2018 that he was willing and able to pay his identified creditors, since that time he offered no evidence to indicate that he tried doing so. AG ¶¶ 19(a) and 19(c) have been established, and because of his previous indication of an ability to resolve his debts, along with a monthly remainder of approximately \$845, and his inaction with respect to satisfying his debts, AG ¶ 19(b) has also been established.

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

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

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(b) minimally applies, but none of the other 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 continuing financial issues, and his failure to voluntarily and timely resolve those delinquent accounts, despite repeated promises to do so, make it rather easy to conclude that they were not infrequent and they are likely to remain unchanged, much like they have been for several years. Applicant has attributed his financial issues essentially to his 2015 period of unemployment, and subsequent much lower salary. But he also acknowledged that he has not always been the most financially responsible person.

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 March 2017; underwent his OPM interviews in June 2018; completed his responses to the interrogatories in June 2019; the SOR was issued in May 2020; and the FORM was issued in November 2020. 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 delinquent debts, he offered no evidence that he took any action to resolve any of those debts. Instead, he made promises to do so, and none of those promises were fulfilled. He claimed that he was paying off a family loan, but he also failed to furnish any documentation to support his claim. His own Personal Financial Statement indicates that he was making no debt payments to any creditors. By failing to address his delinquent debts, he does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

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 resolve financial issues in the future, without further confirmed action, are insufficient.

It should be noted that the Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. (ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)) In this instance, there is no evidence, either verbally or supported by documentation, that Applicant fulfilled his promises or took any good-faith corrective actions with respect to his financial issues, to date.

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)

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))

Applicant is a 44-year-old employee of a defense contractor. He has been serving as a production technician II with his current employer since March 2018. He previously worked for a variety of employers as an electronics technician, an electronics technician, a telecommunications specialist, and as a field service representative. He was honorably discharged from the USN. During his active military service, as well as while he was a civilian contractor, he was deployed or assigned to various locations in the Middle-East. He was granted a secret clearance in 2007.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has eight delinquent accounts, totaling approximately \$25,711. Although he initially claimed that he had insufficient funds to maintain his accounts in a current status, and he prioritized his accounts to care for his family, he indicated in 2018, that he was willing and able to resolve those delinquent debts. But, as of the date the record closed, he had not addressed, much less resolved, any of those delinquent accounts. Moreover, other than Applicant's unverified contentions regarding his efforts to resolve a family loan, he admitted that he had not engaged any of his creditors in a dialogue to establish a repayment plan or that he had made any payments.

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.e.:	Against Applicant
Subparagraphs 1.f., 1.g., and 1.i.:	Against Applicant
Subparagraph 1.h.:	For 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