



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



In the matter of: )  
)  
) ISCR Case No. 21-02009  
)  
Applicant for Security Clearance )

**Appearances**

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

02/28/2022

**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 February 25, 2021, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On October 6, 2021, 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 October 26, 2021, 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 November 29, 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 December 13, 2021. His response was due on January 12, 2022. Applicant chose not to respond to the FORM, for as of January 18, 2022, no response had been received. The case was assigned to me on February 8, 2022. The record closed on January 12, 2022.

### **Findings of Fact**

In his response to the SOR, Applicant admitted, with brief comments, all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.n.). 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 40-year-old employee of a defense contractor. He has been serving in an unspecified position since he was employed on an unspecified date after February 2021. He reported that he was previously employed by other employers in a number of part-time and full-time positions since 2018, and during substantial periods he was unemployed (July 2017 – August 2018; February 2020 – April 2020; April 2020 – September 2020; and October 2020 – until at least February 2021). He is a 2007 high school graduate, and over a multi-year period attended several different colleges during which time he earned credits but no degree. He enlisted in the U.S. Navy in March 2015 and served on active duty until he was honorably discharged in July 2017. He was granted a secret clearance in 2015 following a favorable eligibility determination. (Item 7) He was married in 2012, separated in 2019, and subsequently divorced. He reportedly has two children.

#### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 1 (Answer to the SOR, dated October 26, 2021); Item 2 (SF 86, dated February 25, 2021); Item 3 (Enhanced Subject Interview, dated April 20, 2021); Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 28, 2014); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 20, 2021); and Item 6 (Equifax Credit Report, dated August 30, 2021).

In his SF 86, Applicant acknowledged having some financial issues. He listed some delinquent medical bills and a cable bill, and he stated that he “cannot afford to pay at this time.” (Item 2 at 45-53) On April 30, 2021, he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). During that interview, he described his delinquent accounts and claimed that two factors contributed to his financial difficulties: his separation; and his periods of unemployment. He said he prioritized his accounts and was trying to satisfy living expenses. The investigator requested that he furnish financial documentation to support his claims, but he did not do so. (Item 3 at 4)

In fact, Applicant’s financial difficulties predate his marital separation. In July 2015, he acknowledged that he had delinquent educational loans that were in forbearance until October 2015, as well as delinquent medical bills, and commercial accounts. Based on the documentary evidence reflecting positive actions in addressing those accounts that he furnished the Department of Defense (DOD) CAF, the predecessor of the DCSA CAF, he was determined to be eligible for a secret security clearance. (Item 7)

In his Answer to the SOR, Applicant modified the factors that contributed to his financial difficulties. He listed financial hardship; loss of employment during the pandemic; and his divorce. He stated that his plan was to earn money “contracting” to enable him to fulfill his financial obligations. (Item 7 at 3) Applicant made no statements that he had contacted his creditors, established repayment agreements, or made any payments.

The SOR alleged 14 still-delinquent accounts totaling approximately \$24,425, as set forth below:

SOR ¶¶ 1.a. through 1.f., 1.h., and 1.i. are medical accounts with unpaid balances of \$62, \$62, \$61, \$46, \$741, \$50, \$61, and \$61 that were placed for collection. (Item 3 at 33-4; Item 5 at 4-8; Item 6 at 1-2) The accounts have not been resolved.

SOR ¶ 1.g. is an insurance account with an unpaid balance of \$252 that was placed for collection. (Item 3 at 4; Item 5 at 5; Item 6 at 2) The account has not been resolved.

SOR ¶¶ 1.j., 1.m., and 1.n. are Internet or cellular telephone accounts with unpaid balances of \$171, \$329, and \$156 that were placed for collection. (Item 3 at 3-4; Item 5 at 5-6; Item 6 at 2) The accounts have not been resolved.

SOR ¶ 1.k. is a credit-card account with an unpaid balance of \$21,974 that was placed for collection and charged off. (Item 3 at 3; Item 5 at 4; Item 6 at 4) The account has not been resolved.

SOR ¶ 1.l. is a power-utility account with an unpaid balance of \$399 that was placed for collection and charged off. (Item 6 at 4) The account has not been resolved.

While Applicant contended that he had attended a few seminars and workshops regarding repairing credit, he did not identify the sources of those sessions, when they were conducted, or any other features of the training. There is no evidence of financial

counseling (as opposed to credit repair), a budget, or anything to describe with any specificity his current financial situation. Applicant did not report his net monthly income, his monthly household expenses, or any monthly debt payments (for even the most insignificant of his delinquent debts). In the absence of such information, I am unable to determine if he has any monthly remainder available for savings or spending. There is a paucity of evidence to indicate that his financial problems are now under control, and 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 (4<sup>th</sup> 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 14 still-delinquent accounts totaling approximately \$24,425. Applicant attributed his inability to maintain those accounts in a current status to several factors: financial hardship; loss of employment during the pandemic; his separation; and his divorce. However, as noted above, his financial difficulties existed before 2015. 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

AG ¶¶ 20(b) minimally applies, but none of the other conditions apply. In 2016, Applicant transitioned from a full-time job to a part-time job, reportedly because of a work-related injury in 2014, and it raises the possibility of a business downturn that might have

been largely beyond his control. However, without describing his actual income during the period 2014 through 2021, and without more information, it is impossible to determine what the financial impact may have been. He offered no evidence that his salary was reduced because of the change in employment. It is clear that he either completely stopped paying child support or that he reduced his payments, causing two separate child-support arrearages of substantial amounts.

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))). Although Applicant claimed that he had been making child support payments and expected his health insurance to cover two relatively modest medical bills, he offered no documentary evidence of a good-faith effort to support any of those claims. Between the date he received the SOR in 2020 and the date his response to the FORM was expected in 2021, he made no claimed or verifiable efforts to address any of the delinquent debts.

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 failures to register for the SSS or list any of his delinquent debts in his SF 86 will be considered only for the five purposes listed above.

Based on the evidence, it appears that Applicant actually ignored his delinquent accounts for a substantial multi-year period. Because of his failure to confirm payment of even his smallest delinquent account (a \$512 internet or cellular telephone account) and his failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the conclusion that his financial problems are not under control. He has not acted responsibly by failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors. The Appeal Board has previously commented on such a situation:

Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-

13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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) In this instance, Applicant has failed to offer any evidence that he has even begun making such efforts even after the SOR was issued in July 2020.

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 offered no specifics regarding any repayment efforts; submitted no documentary evidence to reflect any payments made; and only made promises of proposed actions. Not one delinquent debt has been resolved.

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 in-action 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 40-year-old employee of a non-federal company but is sponsored by a defense contractor. He has been serving as a part-time fry cook with his current employer since November 2017. He was previously employed by other employers as a part-time home improvement helper (June 2016 – November 2017) and a full-time security officer (September 2010 – June 2016). He is a 2000 high school graduate with a general education development (GED) diploma.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant omitted, concealed, or falsified his financial history in his SF 86. He failed to timely register with the SSS before he turned 26. He has seven still-delinquent accounts totaling approximately \$98,313. That amount includes substantial child-support arrearages for two children. Although he claimed that he had been making child-support payments; and he expected his health insurance to handle two medical debts, he offered no documentary evidence of a good-faith effort to support any of those claims.

Because of Applicant's failure to confirm any payments, and his failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the



## **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.

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ROBERT ROBINSON GALES  
Administrative Judge