



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



In the matter of: )  
)  
) ISCR Case No. 23-00189  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esquire, Department Counsel  
For Applicant: *Pro se*

12/12/2023

**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 7, 2022, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). He was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) on March 22, 2022. On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories. He responded to those interrogatories on October 17, 2022. On March 2, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) 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 March 9, 2023, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. (Item 2) A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by DOHA on May 3, 2023, 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 June 5, 2023. His response was due on July 5, 2023. Applicant chose not to respond to the FORM, for as of October 17, 2023, when the case was assigned to me, no response had been received. The record closed on July 5, 2023.

### **Findings of Fact**

In his response to the SOR, Applicant admitted three of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a., 1.b., and 1.d.). He denied the remaining allegations with brief comments. 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 30-year-old employee of a defense contractor. He has been serving as an electronic maintenance technician with his current sponsor since January 2022. He previously worked in parts and service (January 2020 – January 2022); as an alarm technician (August 2018 – September 2019); in parts (December 2016 – August 2017); in parts and receiving (January 2015 – December 2016); as an installation technician (December 2013 – January 2015); and as a stocker (March 2012 – December 2013). He was unemployed from September 2019 when he was laid off until January 2020. He is a 2010 high school graduate with a general educational development (GED) diploma. He has never served with the U.S. military. He has never held a security clearance. He was never married but has been cohabiting since 1996. He has two children, born in 2018 and 2020.

### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (Answer to SOR); Item 3 (SF 86); Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated March 15, 2022); Item 7 (Enhanced Subject Interview, dated March 22, 2022); Item 4 (Responses to

Interrogatories, dated October 17, 2022); and Item 5 (Verato Credit Report, dated November 2, 2022).

When Applicant completed his SF 86, he reported only one financial issue – a delinquent account associated with a repossessed automobile. When he was interviewed by an OPM investigator in March 2022, it was only after he was confronted with additional delinquent accounts that he opened up about them as well. He disputed one account, denied any knowledge of several delinquent accounts, and claimed to be unaware of other identified accounts.

The SOR alleged five still-delinquent accounts totaling approximately \$20,797, as set forth below:

SOR ¶ 1.a. is an automobile loan account with an unpaid balance of \$12,259 that was placed for collection when the vehicle was involuntarily repossessed in September 2020 and eventually charged off. (Item 6 at 5; Item 5 at 2; Item 7 at 3-4) Applicant acknowledged that the account became delinquent when he lost his job, and he couldn't afford to continue his payments. He did not maintain any contacts with the creditor since the repossession, and as of October 2022, had not made any arrangements to set up a repayment plan. (Item 4 at 2) Applicant failed to submit any documentation to reflect any payments being made. The account has not been resolved.

SOR ¶ 1.b. is a personal note loan-account with an unpaid balance of \$2,791 that was placed for collection after being over 60 days past due. (Item 6 at 6; Item 5 at 2) Applicant claimed that in January 2021 he agreed to a payment arrangement under which he would pay the creditor \$150 per month, but he failed to submit either to the OPM investigator or to DOHA any verifying documentation. (Item 4 at 2; Item 7 at 4) In the absence of such documentation, there is no evidence to support Applicant's claim regarding any negotiations, agreements, or payments being made. The account has not been resolved.

SOR ¶ 1.c. is a medical account with an unpaid balance of \$309 that was placed for collection. (Item 6 at 6; Item 5 at 2) Applicant claimed the account had been satisfied in 2015 but the creditor failed to confirm that it had been paid. As a result, he disputed it repeatedly in 2016, 2018, 2019, and again in 2020. (Item 7 at 4) As of October 2022, he had not made any efforts to resolve the confusion stemming from the dispute. (Item 4 at 3) Applicant failed to submit any documentation to reflect any payments having been made. The account has not been resolved.

SOR ¶ 1.d. is an unspecified type of account with an unpaid balance of \$5,179 that was placed for collection and charged off. (Item 6 at 5) Applicant disputed the account and indicated that he was unaware of it. (Item 7 at 4) As of October 2022, he had not made any efforts to resolve the account. (Item 4 at 2) The account has not been resolved.

SOR ¶ 1.e. is a medical account with an unpaid balance of \$259 that was placed for collection. (Item 6 at 6) Applicant disputed the account and indicated that he was unaware of it. (Item 7 at 4) As of October 2022, he had not made any efforts to resolve the account. (Item 4 at 3) The account has not been resolved.

During his March 2022 OPM interview, Applicant stated that he intended to contact his creditors in 2022 and resolve the accounts in full. (Item 7 at 4-5) However, he failed to submit any documentation in response to the FORM to confirm that any of the accounts had been paid off. In the absence of such documentation, I conclude the accounts have not been resolved.

There is no evidence of financial counseling, a budget, or anything to describe with any specificity his current financial situation. He did report \$2,963.48 in net monthly income; \$1,710 in monthly household expenses; and \$139.46 in monthly debt payments, leaving \$1,114.02 as a monthly remainder available for savings or spending. He reported \$500 in bank savings and a car worth \$10,000. (Item 4 at 8) None of the SOR-related delinquent accounts are listed as intended recipients of any monthly payments. (Item 4 at 8) Nevertheless, 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, considering his \$20,797 in unresolved delinquent debts.

## **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 five still-delinquent accounts totaling approximately \$20,797. Applicant attributed his inability to maintain the largest of those accounts in a current status to his period of brief unemployment (September 2019 - January 2020) which led to a strain on his finances, without furnishing any details about that situation and how it negatively impacted him. During his March 2022 OPM interview, he indicated he would start resolving all the delinquent accounts in 2022. In his October 2022 Personal Financial Statement, he reported \$1,114.02 as a monthly remainder available for savings or spending. Nevertheless, despite his available funds and his stated intentions, he did not submit any documentation to indicate that he had made any efforts to pay any of the five accounts alleged. AG ¶¶ 19(a) and 19(c) have been established. Because of Applicant's available monthly remainder, it appears that as of October 2022, he had the ability to start addressing his delinquent accounts but chose not to do so, and 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;

(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

While AG ¶ 20(b) had some minor impact on Applicant's financial situation, he had substantial opportunities to start resolving his delinquent accounts once he was once again employed in January 2020, but he chose not to do so. None of the other conditions apply.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))). It appears that Applicant simply decided to ignore his debts and walk away from them without making any verifiable meaningful resolution efforts. Instead, he initially denied the existence of some of those delinquent debts, claiming he was unaware of them, or that he had already resolved them. However, when confronted with the 2022 undisputable credit report evidence of their existence, he discussed his intention to start repayment negotiations during the remainder of 2022.

Applicant's SOR indicates two of his delinquent debts are in charged-off status on his credit reports. A "charged-off debt" is an accounting entry. A creditor considers a debt owed to the creditor to be an asset. When the value of the asset is in doubt, the creditor is required to change the status of the debt to reflect its current status. When the debt appears to be uncollectible, the creditor should change the status for accounting purposes from being an asset to charged-off status. Notwithstanding the change to charged-off status, a creditor may still sell the debt to a collection agent, and the debtor may still pay or settle the debt. Eventually, the charged-off debts will be dropped from the debtor's credit report. "[T]hat some debts have dropped off his [or her] credit report is not meaningful evidence of debt resolution." ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015))). The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection barred because of a state statute of limitations, whichever is longer. (Title 15 U.S.C. § 1681c. See Federal

Trade Commission website, Summary of Fair Credit Reporting Act Updates at Section 605, <https://www.consumer.ftc.gov/articles/pdf-0111-fair-credit-reporting-act.pdf>.)

Based on the evidence, it appears that Applicant not only actually ignored some of his delinquent accounts for a substantial period, but he also denied their existence. Despite his promises and declared intentions, he offered no documentary evidence to support any contentions that resolution efforts had been made. Because of his failure to confirm payment of even his smallest delinquent accounts (a \$259 medical account and a \$309 medical 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 verifiable evidence that he has even begun making such efforts even after the SOR was issued in March 2023.

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 plan; submitted no documentary evidence to reflect any payments made; and only made promises of possible 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 even after 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 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 (as of October 2022) financial information. Applicant's non-existent actions under the circumstances cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at SEAD 4, App. A, ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case considering 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 30-year-old employee of a defense contractor. He has been serving as an electronic maintenance technician with his current sponsor since January 2022. He previously worked in parts and service; as an alarm technician; in parts; in parts and receiving; as an installation technician; and as a stocker. He was unemployed from September 2019 when he was laid off until January 2020. He is a 2010 high school graduate with a GED diploma.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has five still-delinquent accounts totaling approximately \$20,797. During his March 2022 OPM interview, he indicated he would start resolving all the delinquent accounts in 2022. In his October 2022 Personal Financial Statement, he reported \$1,114.02 as a monthly remainder available for savings or spending. Nevertheless, despite his available funds and his stated intentions, he did not submit any documentation to indicate that he had made any efforts to pay any of the five accounts alleged.

Because of Applicant's failure to confirm payment of even his smallest delinquent accounts 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. By failing to address his delinquent accounts while employed and by failing to make limited, if any, efforts of working with his creditors, he has not acted responsibly. There are lingering questions if Applicant is currently in a better position financially than he had been, as well as continuing doubt about his current reliability, trustworthiness, and good judgment.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's track record of zero verifiable efforts to resolve the debts, and the lengthy period of non-contact with his creditors, is negative and disappointing. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all 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

### **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