



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



In the matter of:)
)
) ISCR Case No. 23-01134
)
Applicant for Security Clearance)

Appearances

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

01/10/2024

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 December 25, 2020, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date he was issued a set of interrogatories. He responded to those interrogatories on April 6, 2023. On June 9, 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 an unspecified date, sometime before August 30, 2023, 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 the Defense Office of Hearings and Appeals (DOHA) on August 30, 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 September 13, 2023. His response was due on October 13, 2023. On September 13, 2023, Applicant submitted a statement and an employment document to which there were no objections. The record closed on October 13, 2023. The case was assigned to me on January 4, 2024.

Findings of Fact

In his response to the SOR, Applicant admitted, with comments, all the SOR allegations. (SOR ¶¶ 1.a. through 1.e.). 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 42-year-old prospective employee of a defense contractor. He was offered a position overseas as a video teleconference engineer, contingent upon maintaining his security clearance. He is currently holding an unspecified position with another employer since December 2022. He previously served as a unified communications engineer (December 2020 – December 2022); a VTC technician (October 2019 – December 2020); a unified communications technician (March 2019 – October 2019); a network watch officer (March 2017 – March 2019); a VTC engineer (November 2015 – October 2016); a cable plant engineer (February 2013 – November 2015); an audio-visual engineer (December 2009 – November 2012); and outside plant lead (November 2007 – December 2009). A substantial amount of his employment took place while located overseas in such locations as Qatar, Iraq, Afghanistan, Honduras, and Germany. He was unemployed on several occasions: October 2016 – March 2017; November 2012 – February 2013; June 2007 – November 2007; and April 2005 – June 2005. He is a 1999 high school graduate. He enlisted in the U.S. Army in August 1999 and served on active duty until April 2005 when he was honorably discharged as a corporal (E-4). He was granted a secret clearance in 1999, and it was renewed as recently as August 2009. He has never been married.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (Answer to the SOR, undated); Item 4 (Responses to Interrogatories, dated April 6, 2023); Item 5 (Verato Credit Report, dated April 7, 2023); Item 6 (Verato Credit Report, dated February 7, 2023); Item 7 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 6, 2021); and Item 8 (Enhanced Subject Interview, dated March 29, 2021).

In his December 2020 SF 86, Applicant denied that he had any delinquent accounts. During his March 2021 interview with an investigator with the U.S. Office of Personnel Management (OPM), Applicant again denied that he had any such accounts. After he was confronted with several delinquent accounts that appeared to be in his name, he still claimed to be unaware of them. Nevertheless, he indicated that he would investigate those accounts and satisfy them if they were his or dispute them if they were not his accounts. (Item 8 at 4-5)

In his Answer to the SOR, Applicant reported that several of the accounts were apparently in his name – with the identical first and last name of his father – and that they had been sent to his father, apparently while Applicant was employed overseas. He eventually acknowledged that all the debt was his, and most of the debt was accumulated assisting his terminally ill father financially from abroad. His father passed away in March 2023. He contends that there is no longer any financial responsibility, and that he chose his father over his debt. (Item 4 at 6) He did not explain why he concluded that there was no longer any financial responsibility, especially regarding the two debts totaling \$34,552 that were clearly his.

While Applicant admitted that the accounts were in his/their name, he was disputing them. He did not submit any documentation to support his disputes and did not specify the actual bases for his disputes. In his response to the FORM, Applicant noted that the total debt alleged in the SOR was \$105,669, but the actual total for which he is responsible is only \$60,968. He stated that he had engaged the professional services of a credit repair/debt consolidation company and is attempting to settle all the debt to a zero balance. He added that his prospective position will pay him \$220,000 and if he is granted his clearance, it will enable him to pay off the entire debt within one year. (Response to FORM at 1) He submitted the employment offer substantiating his anticipated annual salary.

The SOR alleged five still-delinquent accounts totaling approximately \$105,669, as set forth below:

SOR ¶ 1.a. refers to a bank credit-card account in his name/his father's name with an unpaid balance of \$28,966 that was placed for collection and charged off. (Item 4 at 2; Item 5 at 2; Item 6 at 2; Item 7 at 4; Item 8 at 4) At the time this account was opened, and the card was sent to his father, Applicant was located either in Afghanistan or Germany. He reported that no repayment arrangements have been made and that no

payments have been made. (Item 4 at 2) The account is not yet in the process of being resolved.

SOR ¶ 1.b. refers to a bank credit-card account in his name/his father's name with an unpaid balance of \$26,416 that was placed for collection and charged off. (Item 4 at 2; Item 5 at 2-3; Item 6 at 2; Item 7 at 2; Item 8 at 4) At the time this account was opened, and the card was sent to his father, Applicant was located either in Afghanistan or Germany. He reported that no repayment arrangements have been made and that no payments have been made. (Item 4 at 2) The account is not yet in the process of being resolved.

SOR ¶ 1.c. refers to savings bank credit-card account with an unpaid balance of \$17,811 that was placed for collection and charged off. (Item 4 at 3; Item 5 at 3; Item 6 at 2; Item 7 at 8) Applicant's description of the account and his responsibility regarding it are confusing. He said it "was issued to pay off in total prior to signed contract date. Access to continued payments were prohibited. In dispute presently." (Item 2 at 1) He offered no further explanation. (Item 2 at 1) He reported that no repayment arrangements have been made and that no payments have been made. (Item 4 at 3) The account is not yet in the process of being resolved.

SOR ¶ 1.d. refers to savings bank installment account with an unpaid balance of \$16,741 that was placed for collection and charged off. (Item 4 at 3; Item 5 at 3; Item 6 at 2; Item 7 at 7) Applicant's description of the account and his responsibility regarding it are confusing. He said it "was issued to pay off in total prior to signed contract date. Access to continued payments were prohibited. In dispute presently." (Item 2 at 1) He offered no further explanation. (Item 2 at 1) He reported that no repayment arrangements have been made and that no payments have been made. (Item 4 at 3) The account is not yet in the process of being resolved.

SOR ¶ 1.e. refers to a bank credit-card account in his name/his father's name with an unpaid balance of \$15,735 that was placed for collection and charged off. (Item 4 at 3; Item 5 at 3; Item 6 at 3; Item 7 at 5; Item 8 at 4) At the time this account was opened, and the card was sent to his father, Applicant was located either in Afghanistan or Germany. He reported that no repayment arrangements have been made and that no payments have been made. (Item 4 at 3) The account is not yet in the process of being resolved.

Applicant reported approximately \$8,476 in current net monthly income; and \$3,055 in monthly household expenses, leaving approximately \$5,421 as a monthly remainder available for savings or spending. In addition, he noted that he had inherited a residence that had not yet been appraised. (Personal Financial Statement, dated April 6, 2023, attached to Item 4) If Applicant is granted his security clearance and is finally hired to his prospective position, his income will increase substantially. Nevertheless, other than Applicant's unclear association with a credit repair/debt consolidation company and his attempts to settle his debts, there is no clear evidence of financial counseling or an anticipated budget.

Policies

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

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

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

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

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation, or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is

because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials." (*Egan*, 484 U.S. at 531)

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." (See Exec. Or. 10865 § 7) Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

The SOR alleged five still-delinquent accounts totaling approximately \$105,669. Most of those debts are in his name, which also happens to be his late father's name. On its face, without any background information, Applicant's history of delinquent debts appears to present either an inability to satisfy debts or a history of not meeting financial obligations. Despite his initial denials or disputes regarding several of the debts, his declared willingness to satisfy those debts if they are his debts, rather than his father's debts, is unambiguous. AG ¶¶ 19(a) and 19(c) have been established. However, it is noted that the issues associated with the delinquent accounts were first brought to Applicant's attention in March 2021 when he was interviewed by OPM. Despite the passage of nearly three years, Applicant seemingly has taken no steps to resolve or to pay any of the debts alleged. And he did not sufficiently articulate his reasons for not doing so. Accordingly, despite the picture of a substantial increase in salary associated with his prospective position and his declared intentions, in light of his inaction, 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

AG ¶¶ 20(a) and 20(e) might apply if Applicant had been more explicit in describing the entire financial situation, but his statements are confusing at best. Applicant worked primarily overseas when the accounts were opened in his name/his father's name. He merely hinted that maybe the accounts were opened by, or used by, his father. He eventually acknowledged that all the debt was his, and most of the debt was accumulated assisting his terminally ill father financially from abroad. He now contends that there is no

longer any financial responsibility, and that he chose his father over his debt. He did not explain why he concluded that there was no longer any financial responsibility, especially regarding the two debts totaling \$34,552 that were clearly his. As noted above, although he admitted that the accounts were in his/their name, he was disputing them without submitting any documentation to support his disputes, and he did not specify the actual bases for his disputes. He stated that he had engaged the professional services of a credit repair/debt consolidation company and is attempting to settle all the debt to a zero balance, but he failed to identify the company or submit documentation reflecting their anticipated goal and responsibilities.

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))). After Applicant was interviewed by the OPM investigator, he made no verifiable efforts to address any of the delinquent debts.

Based on the evidence, it is apparent that Applicant may have intentionally ignored his delinquent accounts for a substantial multi-year period. It is unclear if he opened the accounts for himself or his father, or if the accounts were merely sent to his father without Applicant’s knowledge. He has made no efforts in working with his creditors either to determine the facts or to resolve the accounts. 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 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) In this instance, other than referring to “disputes,” Applicant has denied that he had begun making such efforts even after the SOR was issued.

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 clearly stated that he intended to pay off his delinquent debts if they turned out to be his responsibility. He did not establish any verifiable repayment plans or verifiable evidence of payments to any of the creditors. And now, without explanation, he declares that he is no longer responsible for the debts.

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 verifiable evidence of financial counseling, a budget, or a repayment plan. Applicant reported his current net monthly income and his monthly household expenses. If he had made any good-faith efforts to determine the facts regarding the accounts, or to make any payments associated with the two accounts that he acknowledged were his, it would reflect positive actions by him. However, Applicant’s inaction under the circumstances continues to 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 mitigating evidence regarding Applicant's financial considerations under the whole-person concept. Applicant is a 42-year-old prospective employee of a defense contractor. He was offered a position overseas as a video teleconference engineer, contingent upon maintaining his security clearance. He is currently holding an unspecified position with another employer since December 2022. He previously served as a unified communications engineer; a VTC technician; a unified communications technician; a network watch officer; a VTC engineer; a cable plant engineer; an audio-visual engineer; and outside plant lead. A substantial amount of his employment took place while located overseas in such locations as Qatar, Iraq, Afghanistan, Honduras, and Germany. He is a 1999 high school graduate. He enlisted in the U.S. Army in August 1999 and served on active duty until April 2005 when he was honorably discharged as a corporal (E-4). He was granted a secret clearance in 1999 and it was renewed as recently as August 2009. Applicant reported that several of the accounts were apparently in his name – with the identical first and last name of his father – and that they had been sent to his father, apparently while Applicant was employed overseas. His prospective position will pay him \$220,000 and if he is granted his clearance, it will enable him to pay off the entire debt within one year.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. There are five still-delinquent accounts totaling approximately \$105,669. Applicant eventually acknowledged that all the debt was his, and most of the debt was accumulated assisting his terminally ill father financially from abroad. He now contends that there is no longer any financial responsibility, and that he chose his father over his debt. He did not explain why he concluded that there was no longer any financial responsibility, especially regarding the two debts totaling \$34,552 that were clearly his. The issues associated with the delinquent accounts was first brought to Applicant's attention in March 2021 when he was interviewed by OPM. Despite the passage of nearly three years, Applicant seemingly has taken no steps to resolve or to pay any of the debts alleged. And he did not sufficiently articulate his reasons for not doing so.

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

