DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:)
)
) ISCR Case No. 22-01343
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esquire, Department Counsel
For Applicant: *Pro se*

05/24/2024

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance is granted.

Statement of the Case

On December 5, 2016, and again on October 6, 2021, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On September 26, 2022, 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.

In an undated and unsworn statement, Applicant responded to the SOR and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on November 29, 2022. The case was assigned to me on August 29, 2023. A Notice of Microsoft Teams Video Teleconference Hearing was issued on February 21, 2024. I convened the hearing as scheduled on February 28, 2024.

During the hearing, Government exhibits (GE) 1 through GE 6 and Applicant exhibits (AE) A through AE H were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on March 11, 2024. I kept the record open until the close of business on March 18, 2024, to enable Applicant to supplement it with documentation that was identified during the hearing. He took advantage of that opportunity and submitted several additional documents that were marked and admitted into evidence as AE R without objection. The record closed on March 18, 2024.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations pertaining to financial considerations. (SOR ¶¶ 1.a. through 1.m.). His admissions 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 58-year-old employee of a defense contractor. He has been serving as a communications technician with his current employer since July 2021. He was previously employed by other employers as a support engineer (July 2020 – July 2021), Voss technician (July 2019 – February 2020), communications technician (June 2018 - August 2019), and travel signal technician (December 2017 – June 2018). A 1984 high school graduate, he received an associate degree in 2007. He enlisted in the U.S. Navy in June 1984, and served on active duty until July 2004, when he was honorably retired as an electronics technician chief petty officer (E-7). He has been granted a variety of security clearances, including top secret and sensitive compartmented information (SCI) in about 2002 and secret in 2011 and again in 2018. He was married in 1986 and divorced in 1996. He remarried in 2002. He has two biological children, born in 1989 and 2004.

Military Awards and Decorations

During his military career, Applicant was awarded Navy & Marine Corps Achievement Medal (4 awards), the Good Conduct Medal (5 awards), the Sea Service Deployment Ribbon, the National Defense Service Medal (2 awards), the Meritorious Unit Commendation (4 awards), the Navy Efficiency Ribbon (2 awards), the Coast Guard Meritorious Unit Commendation, the Oversea Service Ribbon, the Southwest Asia

Service Medal (2 awards), the Armed Forces Service Medal, the Enlisted Surface Warfare Specialist Badge, the Navy Unit Commendation, the Pistol Sharpshooter Badge, the Navy Commendation Medal (2 awards), and the integrated Underwater Surveillance Systems Badge. (AE A)

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: GE 1 (SF 86, dated October 6, 2021); GE 3 (Bankruptcy Petition, filed September 12, 2017); GE 4 (Verato Credit Report, dated June 7, 2022); GE 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated November 30, 2021); GE 6 (Equifax Credit Report, dated February 21, 2024); AE E (Experian Credit Report, dated October 3, 2016); AE F (Experian Credit Report, dated October 9, 2022); AE I (Personal Financial Statement, dated February 29, 2024); and AE L (State Installment Payment Agreement and Account Summary).

In his response to the SOR, Applicant noted that before 2016 he had never had any financial problems and had never even bounced a check. The financial problems commenced after he tried to live what he called the American Dream. He and a friend who was a chef and restaurant owner decided to open his own business – a restaurant and lounge with 11 employees – while living strictly on his military retirement and his wife's salary, and not taking any money from the business. His partner was not an investor in the business but had the expertise while Applicant was the sole investor. (Tr. at 30-31) Except for his residence mortgage, he claimed to have "zero" debt. The venture of establishing and maintaining his business eventually proved to be unsuccessful and business-related debts (unanticipated renovations and unexpected breakdown of various systems) started to develop and increase. He acknowledged that he failed to recognize the pending failure sooner as he was trying to reverse the situation. (Response to SOR at 2) In an effort to reduce his debt, Applicant took on a second job, first within the state, and then in Iraq. (Tr. at 33)

On December 30, 2016, Applicant engaged the professional services of a debt relief program under which he agreed to make monthly payments of $2,604 for a period of 53 months commencing in January 2017. (AE R) It remains unclear if he continued the program for an unspecified period and if any of his 18 listed creditors received any payments out of it.

In September 2017, in an effort to try to pay off his debts, totaling about $667,512, Applicant voluntarily filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. As part of the Chapter 13 process, through December 5, 2018, Applicant was paying about $8,500 per month, an amount he found difficult to sustain, and he eventually paid the Trustee $5,550.62 for expenses of administration ($4,009 in attorney's fees; $310 in court costs, and $1,231.62 in trustee expenses and compensation); and $30,699 (minus $4,510.13 that was refunded) that was paid by or on behalf of the debtor. There were $21,838.65 in secured principal payments and $7,799.60 in priority unsecured payments. (GE 3 at 24, 76-77; Tr. at 29, 35) While the Chapter 13 process was continuing, Applicant accepted an overseas position in Iraq. A friend – also a restaurant owner – introduced

him to an attorney who had assisted the friend with a bankruptcy, and shortly thereafter, Applicant disengaged from his original bankruptcy attorney and hired his friend's attorney who recommended the bankruptcy be converted from Chapter 13 to Chapter 11. After procrastinating for some time, the conversion motion was finally filed. (GE 1 at 48; Tr. at 35) The Order granting the conversion was granted in November 2018. (Response to SOR at 2; GE 3 at 9)

Applicant's new bankruptcy attorney purportedly followed the Chapter 11 bankruptcy process, but at one point suggested to Applicant that they should convert the process to Chapter 7. The conversion was approved in February 2020. (GE 3 at 15; Tr. at 36) Applicant initially agreed but remembering the warning he had previously received when he was granted his security clearance in 2017 (AE M), he changed his mind and told his attorney to withdraw the Chapter 7 request. (Response to SOR at 3) Unfortunately for Applicant, he was at that time employed in Afghanistan, and he was unable to address the situation with his attorney until he returned. The Chapter 7 process was dismissed on June 29, 2020, not because Applicant's attorney had withdrawn it, but because no actions had been taken to comply with the trustee's requirements, including Applicant's failure to appear for a meeting of creditors because he was still in Afghanistan. No delinquent accounts were discharged under Chapter 7. (GE 3 at 16; Tr. at 38)

When Applicant returned from Afghanistan, he and his attorney discussed a new repayment plan under which they would address each creditor individually. Applicant paid this attorney over $11,000 to handle everything. He also claimed that the attorney settled or paid off between $60,000 and $80,000 of the debt through negotiations, but Applicant was unable to obtain specific information from the attorney to verify those negotiations and results. (Tr. at 37, 40) Applicant also initially contended that he had personally paid off several debts when he refinanced his residence in 2023, but he could only identify one of them. (Tr. 41-43) When he responded to the SOR, Applicant was "awaiting guidance and direction from [his] attorney as how to proceed." (Response to SOR at 3) As of the date of the hearing – some 18 months later – Applicant had received no such guidance and direction.

In addition to the multiple related bankruptcy filings, the SOR alleged 12 different financial accounts that had been placed for collection or charged off, totaling approximately $136,354, as follows:

SOR ¶ 1.a. refers Applicant's successive bankruptcy filings under Chapter 13, Chapter 11, and Chapter 7. (GE 3; GE 4 at 2; GE 5 at 4; GE 6 at 1) As noted above, only the Chapter 13 involved verified payments made by Applicant to the Trustee and payments made by the Trustee to creditors. Neither the Chapter 11 nor the Chapter 7 was successful. Applicant was relying on the professional advice and guidance of his bankruptcy attorneys, and it appears that while the first attorney was at least partially successful, his second attorney's verifiable performance is questionable at best. The Chapter 13 process resolved some of Applicant's financial issues as well as partially resolved other delinquent accounts.

SOR ¶ 1.b. refers to a bank account with an unpaid balance of $18,638 that was placed for collection and charged off. While it was identified in the Chapter 13 bankruptcy, no payments were made to the creditor by the Trustee. (GE 3 at 77; GE 4 at 3; GE 5 at 5) The account has not been resolved.

SOR ¶ 1.c. refers to a credit union credit-card account with an unpaid balance of $18,295 that was placed for collection and charged off. It was identified in the Chapter 13 bankruptcy, and $18,611.01 was paid to the creditor by the Trustee, but Applicant's 2024 Equifax Credit Report does not recognize any such payment. (GE 3 at 76; GE 4 at 3; GE 5 at 5; GE 6 at 5) The account has been resolved.

SOR ¶ 1.d. refers to an unspecified type of account with an unpaid balance of $17,222 that was placed for collection and charged off. It was identified in the Chapter 13 bankruptcy and paid off by the Trustee. (GE 3 at 76; GE 4 at 3; GE 5 at 5) The account has been resolved.

SOR ¶ 1.e. refers to a bank account with an unpaid balance of $16,134 that was placed for collection and charged off. It was identified in the Chapter 13 bankruptcy and paid off by the Trustee. (GE 3 at 77; GE 4 at 3; GE 5 at 6) Applicant made an additional payment of $15,244.16 to a collection agency representing the creditor in March 2023. (AE P) The account has been resolved.

SOR ¶ 1.f. refers to a bank account with an unpaid balance of $15,987 that was placed for collection and charged off. While it was identified in the Chapter 13 bankruptcy, no payments were made to the creditor by the Trustee. (GE 3 at 76; GE 4 at 4; GE 5 at 6) The account has not been resolved.

SOR ¶ 1.g. refers to a bank credit-card account with an unpaid balance of $12,354 that was placed for collection and charged off. While it was identified in the Chapter 13 bankruptcy, no payments were made to the creditor by the Trustee. (GE 3 at 76; GE 4 at 4; GE 5 at 6) However, upon personally reaching out to the creditor in August 2023, a settlement payment plan was reached, and Applicant made four payments each of $1,723.75 – for an agreed settlement amount of $6,895 – commencing in September 2023 and ending in December 2023. (AE O) The payments were timely made, and the account has been resolved.

SOR ¶ 1.h. refers to a bank account with an unpaid balance of $9,767 that was placed for collection and transferred or sold to another collection agent. It was identified in the Chapter 13 bankruptcy, and $9,767.14 was paid to the collection agent by the Trustee. (GE 3 at 77; GE 4 at 4; GE 5 at 7) The account has been resolved.

SOR ¶ 1.i. refers to a bank account with an unpaid balance of $9,702 that was placed for collection and transferred or sold to another collection agent. It was identified in the Chapter 13 bankruptcy, and $9,701.84 was paid to the collection agent by the Trustee. (GE 3 at 77; GE 4 at 4; GE 5 at 7) The account has been resolved.

SOR ¶ 1.j. refers to a credit union account with an unpaid balance of $7,692 that was placed for collection and charged off. It was identified in the Chapter 13 bankruptcy and paid off by the Trustee. (GE 3 at 76; GE 4 at 4; GE 5 at 7) The account has been resolved.

SOR ¶ 1.k. refers to a credit-card account with an unpaid balance of $6,781 that was placed for collection and charged off. While it was identified in the Chapter 13 bankruptcy, no payments were made to the creditor by the Trustee. (GE 3 at 76; GE 4 at 5; GE 5 at 8) The account has not been resolved.

SOR ¶ 1.l. refers to a bank account with an unpaid balance of $3,782 that was placed for collection and sold to another collection agent. It was identified in the Chapter 13 bankruptcy, and $3,781.86 was paid to the collection agent by the Trustee, but Applicant's 2024 Equifax Credit Report does not recognize any such payment. (GE 3 at 77; GE 4 at 5; GE 5 at 8; GE 6 at 4) The account has been resolved.

SOR ¶ 1.m. refers to a credit union account with an unspecified unpaid balance that was placed for collection, charged off, and purchased by another collection agent. (GE 4 at 5) Because the unpaid balance was not alleged, and the identity of the debt purchaser was not provided, it is impossible to align the necessary information to determine if the account was identified in the Chapter 13 bankruptcy by its own name or under the identity of another creditor. The insufficiency of the allegation in furnishing necessary specifically alleged facts enables me to conclude that the facts in the allegation are too general to be effectively presented. Accordingly, the allegation is concluded in favor of Applicant.

While not alleged in the SOR, Applicant also had other debts for which he made substantial payments under his Chapter 13 bankruptcy, including approximately $6,107 to the state department of revenue, and approximately $1,692 to the Internal Revenue Service (IRS). (GE 3 at 77) Starting in September 2020, under a separate installment plan with the state department of revenue, he was and is still paying them $835.34 each month as part of a 60-month payment plan. (Tr. at 45-46) As of March 14, 2024, he had already completed 42 payments of that plan. (AE L)

As of February 29, 2024, according to a Personal Financial Statement, Applicant reported a family monthly net income of $11,891; monthly expenses of $10,310 (including mortgage/rent of $3,352), leaving a remainder of about $1,581 available for saving or spending. He also reported actual monthly debt payments totaling $6,256, but that figure erroneously again included the $3,352 for mortgage/rent. As corrected, his debt payments total $1,504, leaving a true remainder of about $77. He also reported approximately $2,889 in bank savings, and about $28,219 in his 401K. (AE I)

Applicant received guidance in budgeting, cash flow management, unsecured debt, and debt negotiation in December 2016, and completed on-line credit and debt counseling, including budget analysis, when he initially filed for bankruptcy in September 2017. (AE J; AE R)

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.

In 2015, Applicant and a friend decided to open his own business – a restaurant and lounge with 11 employees. His partner was not an investor in the business but had the expertise while Applicant was the sole investor. The venture of establishing and maintaining his business eventually proved to be unsuccessful and business-related debts started to develop and increase. By September 2017, his business debts totaled about $667,512. In an effort to try to resolve those debts, with the assistance of attorneys, he started successive bankruptcy filings under Chapter 13, Chapter 11, and Chapter 7. Although the Chapter 13 involved verified payments made by Applicant to the Trustee and payments made by the Trustee to creditors, neither the Chapter 11 nor the Chapter 7 was successful, and many accounts remained delinquent. 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; and
>
> (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) 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)). Applicant noted that his financial problems commenced when he tried to fulfil his dream of opening his own business in 2015. Before 2016, he had never had any financial problems and had never even bounced a check. The start-up expenses and other business-related expenses started mounting despite his best efforts to control them. Without taking any funds from the business, he intended to live off his retirement and his wife's salary. He attributed his initial financial issues essentially to a combination of factors including unanticipated renovation expenses and unexpected breakdown of various systems. He failed to recognize the pending business failure sooner as he was trying to

reverse the situation. In an effort to reduce his debt, Applicant took on a second job, first within the state, and then in Iraq.

In December 2016, Applicant engaged the professional services of a debt relief program under which he agreed to make monthly payments of $2,604 for a period of 53 months commencing in January 2017. It remains unclear if he continued the program for an unspecified period and if any of his 18 listed creditors received any payments out of it. In September 2017, with about $667,512 in debts, Applicant voluntarily filed for bankruptcy under Chapter 13 of the U.S. Bankruptcy Code. Through December 5, 2018, he made $21,838.65 in secured principal payments and $7,799.60 in priority unsecured payments. While the Chapter 13 process was continuing, Applicant accepted an overseas position in Iraq to generate additional funds. He disengaged from his original bankruptcy attorney and hired a friend's attorney who recommended the bankruptcy be converted from Chapter 13 to Chapter 11. After procrastinating for some time, the conversion motion was finally filed, and the conversion was granted in November 2018.

Applicant's new bankruptcy attorney suggested to Applicant that they should convert the process to Chapter 7. The conversion was approved in February 2020. Applicant initially agreed but then changed his mind and told his attorney to withdraw the Chapter 7 request. Unfortunately for Applicant, he was at that time employed in Afghanistan, and he was unable to address the situation with his attorney until he returned. The Chapter 7 process was dismissed on June 29, 2020, not because Applicant's attorney had withdrawn it, but because no actions had been taken to comply with the trustee's requirements, including Applicant's failure to appear for a meeting of creditors because he was still in Afghanistan. No delinquent accounts were discharged under Chapter 7. Upon his return from overseas, Applicant and his attorney discussed a new repayment plan under which they would address each creditor individually. Applicant paid this attorney over $11,000 to handle everything. He also claimed that the attorney settled or paid off between $60,000 and $80,000 of the debt through negotiations, but Applicant was unable to obtain specific information from the attorney to verify those negotiations and results. Applicant also initially contended that he had personally paid off several debts when he refinanced his residence in 2023, but he could only identify one of them. When he responded to the SOR, Applicant was "awaiting guidance and direction from [his] attorney as how to proceed." As of the date of the hearing – some 18 months later – Applicant had received no such guidance and direction.

However, despite receiving questionable legal support from his second bankruptcy attorney, Applicant apparently had a repayment plan as far back as 2016, and there is verifiable documentary evidence that through his varied efforts, he initiated and is adhering to a good-faith effort to repay his overdue creditors by making substantial payments for accounts that were both alleged in the SOR as well as accounts that were not alleged. Of the 11 alleged delinquent accounts, not including the one for which I indicated the allegation was too broad with insufficient facts to consider, Applicant has resolved 8 such accounts. In addition, he has resolved or is in the process of resolving several identified but unalleged accounts.

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 unlisted and unalleged delinquent accounts will be considered only for the five purposes listed above.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (*See, e.g.,* ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018). In this instance, Applicant commenced his resolution plan in 2016 and then took verifiable action under Chapter 13 in September 2017 – five years before 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, there are substantial voluntary payments to creditors as well as resolved accounts.

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 evidence of financial counseling and a budget. Far more important is the verifiable documentary evidence of his successful efforts to resolve the eight accounts and his declared intentions of eventually addressing the remaining delinquent accounts. Applicant is currently in a better position financially than he had been as he has a small monthly remainder and his delinquent debts have been reduced significantly. Applicant's actions for such a long period between 2016 and today, under the circumstances, no longer 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).

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 claimed or verifiable efforts to resolve his debts is positive and extremely favorable. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant proffered substantial mitigating evidence, which was more than sufficient to overcome the disqualifying conditions established under Guideline F. *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: FOR APPLICANT

Subparagraphs 1.a. through 1.m.: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES
Administrative Judge