



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



In the matter of: )  
)  
) ISCR Case No. 24-00527  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esquire, Department Counsel  
For Applicant: *Pro se*

11/25/2024

**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 April 11, 2023, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On July 26, 2023, he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). On October 23, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued him a set of interrogatories. He responded to those interrogatories on November 7, 2023. On April 25, 2024, the DSCA CAS, renamed as the DCSA Adjudications and Vetting Services (AVS), 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; Department Of Defense (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 May 14, 2024, 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), including proposed Government Exhibits (GE), was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on June 18, 2024, 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 July 11, 2024. His response was due on August 10, 2024. As of August 10, 2024, no response had been received. The case was assigned to me on October 15, 2024, and there was still no response to the FORM.

### **Findings of Fact**

In his response to the SOR, Applicant admitted, without comments, all the SOR allegations. (SOR ¶¶ 1.a. through 1.h.) Applicant's 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 31-year-old employee of a defense contractor for which he has been serving as an inside wireman since June 2016. He was previously employed by other companies as a receiving clerk (May 2015 – May 2016); taxi dispatcher (May 2014 – May 2015); oil change mechanic (April 2013 – April 2014); and grocery clerk (January 2012 – April 2013). He did not report his educational background. He has never served with the U.S. military. He has never held a security clearance. He was married in 2017, and has three children, born in 2015, 2019, and 2021.

#### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 4 (Answers to Interrogatories, dated November 7, 2023); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 26, 2023); Item 6 (Verato Credit Report, dated November 17, 2023); Item 7 (Experian Credit Report, dated June 14, 2024); and Item 8 (Enhanced Subject Interview, dated July 26, 2023).

In Section 26 of his April 2023 SF 86, Applicant was asked to report any specific financial delinquency issues, and in response to those questions, he said "no." However, upon being confronted by the OPM investigator in July 2023 regarding such issues, he

initially acknowledged one delinquent account associated with a vehicle repossession. He again stood by his position, but upon being confronted with additional delinquent accounts, the truth finally came out. Applicant attributed those delinquencies to periodically not working a lot resulting in an inability to afford making monthly minimum payments. (Item 8 at 4-5) He noted that his financial situation is now stable, he has a willingness and ability to pay his accounts on time, and he “pays more attention to the bills now and always pays them on time and lives with less debt.” (Item 8 at 5)

In his November 2023 response to the interrogatories, Applicant described his financial situation as follows:

I became a father at age 22, and made unwise financial choices in my twenties. I am now 30, and realizing the importance of budgeting and being financially stable, even when work is slow in my industry. Ups and downs with work have led to accumulation of debt.

(Item 4 at 7)

The SOR alleged eight still-delinquent accounts totaling approximately \$40,642, as set forth below:

SOR ¶ 1.a. refers to an automobile loan for \$65,908 with an unpaid balance of \$18,823 that became delinquent in 2022 when the vehicle was voluntarily repossessed. The account was placed for collection and charged off. Applicant made his last payment in November 2022. (Item 4 at 3; Item 5 at 2; Item 6 at 2; Item 7 at 1; Item 8 at 4) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

SOR ¶ 1.b. refers to a bank credit-card account with an unpaid balance of \$1,266 that became delinquent in 2017 and was placed for collection. When questioned by the OPM investigator, Applicant was unsure as to the status or balance of the account. (Item 4 at 4; Item 5 at 3; Item 6 at 2; Item 7 at 1; Item 8 at 4) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

SOR ¶ 1.c. refers to a bank credit-card account with an unpaid balance of \$459 that became delinquent in 2017 and was placed for collection and transferred or sold to a debt purchaser. When questioned by the OPM investigator, Applicant was unsure as to the status or balance of the account. (Item 4 at 5; Item 5 at 3; Item 6 at 2; Item 8 at 4-5) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

SOR ¶ 1.d. refers to an automobile loan with an unpaid balance of \$10,960 that became delinquent and was placed for collection in November 2022 when Applicant

made his last payment, and the vehicle was repossessed. Applicant did not mention this account to the OPM investigator. (Item 6 at 3; Item 7 at 1-2; Item 8 at 4) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

SOR ¶ 1.e. refers to a cellular telephone account with an unpaid balance of \$905 that became delinquent and was placed for collection. When questioned by the OPM investigator, Applicant was unsure as to the status or balance of the account. (Item 4 at 4; Item 5 at 3; Item 8 at 4) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

SOR ¶ 1.f. refers to an unspecified type of account – that Applicant used to purchase a wedding ring for his wife – with an unpaid balance of \$560 that became delinquent and was placed for collection around the end of 2015. When questioned by the OPM investigator, Applicant was unsure as to the status or balance of the account. (Item 4 at 4; Item 5 at 3; Item 8 at 4) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

SOR ¶ 1.g. refers to an insurance account with an unpaid balance of \$225 that became delinquent and was placed for collection. When questioned by the OPM investigator, Applicant was unsure as to the type of account, the status, or balance of the account. (Item 4 at 5; Item 5 at 4; Item 8 at 5) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

SOR ¶ 1.h. refers to an automobile loan with an unpaid balance of \$7,444 that became delinquent and was placed for collection in late 2019 or early 2020 when Applicant was unable to continue making payments, and the vehicle was repossessed. When questioned by the OPM investigator, Applicant was unsure as to the status or balance of the account. (Item 4 at 3; Item 5 at 4; Item 8 at 4-5) Applicant made no claim that he had contacted the creditor, attempted to work out a repayment plan, or made any payments. He did not respond to the FORM with any updated status information. The account has not been resolved.

In November 2023, Applicant attached a Personal Financial Statement to his answers to interrogatories in which he reported approximately \$7,942 in current family net income; approximately \$4,169 in monthly household expenses, including one payment of \$832 for an automobile loan (for which there is a balance of \$34,000), leaving approximately \$3,773 as a monthly remainder available for savings or spending. In addition, he noted approximately \$50,000 in a 401k retirement account. He did not report any bank savings or other assets. (Item 4 at 8) The Government has raised a potential concern that Applicant's Personal Financial Statement may not be accurate because

paystubs he also submitted appear to be lower than his reported income. That issue might have been clarified had Applicant chosen to comment in response to the FORM, but in the absence of any such clarification, the information he reported remains as he reported it.

In his response to the interrogatories, Applicant also reported that he had begun a Dave Ramsey financial guidance program to begin paying off his debt. He claimed that he now has a new outlook on finances and looks forward to seeing his debt being paid off and his savings grow. (Item 4 at 7) He did not submit any documentation to explain which of the Ramsey programs he was enrolled in or was following, any specific plans on his repayment process, or reflect any documentary evidence to verify that actual payments to any creditors had taken place in November 2023 – approximately one year ago.

### **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*, 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 eight still-delinquent accounts totaling approximately \$40,642. Applicant's history of delinquent debts appears to present both a periodic inability to satisfy debts along with a lengthy history of not meeting financial obligations commencing in about 2015. His declared willingness to satisfy those debts is unambiguous, but his failure to take any verifiable corrective action or to submit documentation to substantiate any payments greatly diminishes that willingness, especially when he reports a substantial monthly remainder that is available to enable him to do so. AG ¶¶ 19(a), 19(b), and 19(c) have 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

None of the mitigating conditions apply. Applicant's initial financial difficulties were essentially caused by unwise financial choices – not by issues beyond his control – without realizing the importance of budgeting and being financially stable. There was one automobile loan for approximately \$65,908, resulting in a repossession; along with two other automobile loans resulting in repossessions. Modest income should generate modest expenses, but Applicant seeming simply kept spending and ceased making payments to his creditors. He offered no evidence that he had remained in contact with his creditors, for when he was interviewed by the OPM investigator in July 2023, he was unaware of the status or unpaid balances on his accounts. As of the closing of the record, he still has not submitted any documentary evidence of repayment plans or payments.

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))). Based on the evidence, Applicant failed to maintain contact with his creditors, and failed to make any payments to his creditors although he seemingly has sufficient funds to start doing so even in modest amounts. 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, although continuously employed, Applicant kept purchasing vehicles only to lose them to repossessions, and although he has a substantial monthly remainder, he simply has failed to address any of his creditors.

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, but to date, despite being given the opportunities to start doing so, he did not, even with a small delinquent debt of \$225.

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 or a budget other than Applicant’s unverifiable claim that he is attending a Dave Ramsey financial program. The absence of evidence that Applicant has maintained contact with his creditors, or that he has entered into repayment plans, or made even one payment to a creditor, reflects negative actions by him. Applicant’s inaction for such a lengthy period, under the circumstances, does 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).

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. Apr. 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 unalleged false response to the SF 86 inquiries and his initial false narratives to the OPM investigator will be considered only for the five purposes listed above.

There is little mitigating evidence to support granting Applicant's eligibility for a security clearance. He has been consistently employed since 2013 and with his current employer since June 2016. He eventually became candid regarding his delinquent accounts, and acknowledged making unwise financial choices when he was younger. He claims to have learned about financial stability and the importance of budgeting. He reported a substantial monthly remainder to be used for savings or paying down his debts. He claims he will start resolving his delinquent accounts. The mitigating evidence stops here.

The disqualifying evidence under the whole-person concept is simply much more substantial and compelling. Applicant was totally disengaged from his creditors and his delinquent accounts. He purchased three automobiles, all of which were later repossessed, and he simply ignored his debts claiming insufficient salary to make monthly payments. He listed no financial issues in his SF 86, and when questioned by the OPM investigator, Applicant initially denied having any such issues, but after being confronted, he finally acknowledged having financial problems, but was unsure as to the status or balances of his delinquent accounts. Applicant made no claim that he had contacted his creditors, attempted to work out repayment plans, or made any payments. He did not respond to the FORM with any updated status information. None of the alleged delinquent accounts have been resolved.

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

