



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



In the matter of:)
)
) ISCR Case No. 24-00949
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esquire, Department Counsel
For Appellant: *Pro se*

11/22/2024

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 August 27, 2023, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On November 1, 2023, an investigator from the U.S. Office of Personnel Management (OPM) interviewed him. On July 9, 2024, the Defense Counterintelligence and Security Agency (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 July 16, 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, was mailed to him by the Defense Office of Hearings and Appeals (DOHA) on July 30, 2024, and he was afforded an opportunity, within a period of 30 days, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, he was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to his case. Applicant received the FORM on August 14, 2024. His response was due on September 13, 2024. Applicant timely submitted several documents which I marked as Applicant Exhibits (AE) A and AE B and admitted without objection. The case was assigned to me on October 11, 2024.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with a brief comment, all the factual allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.m.). Applicant's admissions and comment 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 34-year-old employee of a defense contractor for whom he has been serving as an over-the-road (OTR) truck driver since August 2023. He previously worked for other employers as a team truck driver (October 2022 – August 2023); OTR truck driver (May 2022 – October 2022 and November 2021 – April 2022); shift site operation supervisor (February 2017 – October 2021); and security operations center operator (March 2012 – July 2016). His high school education was not reported. He reported he received a computer-related certificate in 2021. He has never served in the U.S. military. He was granted an interim secret clearance in September 2023. He was married in 2011. He has two children, born in 2012 and 2014.

Financial Considerations

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (SF 86, dated August 27, 2023); Item 4 (Enhanced Subject Interview, dated November 1, 2023); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 14, 2019); and Item 6 (Verato Credit Report, dated March 28, 2024).

In Section 26 of his August 2023 SF 86, Applicant was asked to report any specific financial delinquency issues, and, in response to those questions, he reported several such accounts, claiming that he had fallen on hard times. He added that he is still not the best financially, but he is surviving. (Item 3 at 39-53) Upon being questioned by the OPM investigator in November 2023, he confirmed those previously listed delinquent accounts but denied any others. After he was confronted by the OPM investigator regarding such issues, he finally acknowledged several additional delinquent accounts that were not listed in his credit report. He noted that his financial situation is now “ok,” but he acknowledged there were “things on his credit.” After his accounts became delinquent – one as far back as 2012 with most of the others from 2019 until 2023 – he did not maintain contact with his creditors and did not attempt to make any payments. Upon being questioned about the accounts, he claimed that he intends to pay the accounts. (Item 4 at 1-4)

In his July 2024 response to the SOR, Applicant described his financial situation as follows:

I admit to the statement paragraph above pertaining to my credit. I am also understand that I do need to pay these off of my credit in order to continue this process. With extra time given, I can pay these off one by one to improve this and get my credit situation under control. In the past, I have made poor decisions regarding my credit, and I am in the process of getting that fixed.

(Item 2 at 3)

The SOR alleged 13 delinquent accounts totaling approximately \$28,256, including credit-card accounts and other consumer accounts, which Applicant used for a variety of purposes including the purchases of furniture and household items, a computer course, guns, cellular phone service, cable service, truck-driving school commercial driver’s license certification, an electric utility, and a vehicle. All the accounts were placed for collection, some were charged off, some were sold to debt purchasers, and one vehicle was repossessed. (Item 4 at 1-4; Item 5 at 4-8; Item 6 at 2-4)

As of his November 2023 OPM interview, Applicant had not contacted the listed creditors to set up any repayment plans and had not made any payments to any creditor. Not alleged in the SOR were student loan accounts totaling approximately \$20,000 that were apparently in forbearance due to COVID-19.

As of July 9, 2024 – the date the SOR was issued – other than evidence that he had started making student loan payments, Applicant had made no claims that he had contacted his SOR creditors or made any payments to those alleged creditors.

On August 19, 2024, in response to the FORM, Applicant claimed that he had settled one cellular phone account (SOR ¶ 1.h.) – an account with an unpaid balance of \$397 – for approximately \$199, provided the payment was received no later than August

26, 2024. (AE A; AE B) He failed to submit any documentation to verify that the payment had been timely made. Applicant also claimed that he had settled one electric utility account (SOR ¶ 1.g.) – an account with an unpaid balance of \$605 – for the full unpaid balance to be paid \$25 bi-weekly until the balance is paid. (AE A) He failed to substantiate that repayment plan, or any actual payments, with any documentation from the creditor, or copies of any payments. In addition, Applicant claimed that he had settled the computer course account (SOR ¶ 1.a.) – an account with an unpaid balance of \$6,276 – for the full unpaid balance to be paid with a downpayment of \$1,175 to be split into an initial payment of \$200 and weekly payments of \$155 until the downpayment is completed, followed by weekly \$82 payments until the remaining unpaid balance is paid off. (AE A) He failed to substantiate that repayment plan, or any actual payments, with any documentation from the creditor, or copies of any payments.

As of the closing of the record, Applicant has not reported his current family net income, his monthly household expenses, including any debt payments, or any monthly remainder available for savings or spending. The record is silent as to whether or not he has received any financial counseling or if he currently has a 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 several 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. Sep. 22, 2005))

A person who seeks access to classified information enters 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 13 delinquent accounts totaling approximately \$28,256, including credit-card accounts and other consumer accounts, which Applicant used for a variety of purposes. All the accounts were placed for collection, some were charged off, some were sold to debt purchasers, and one vehicle was repossessed. Applicant's history of delinquent debts presents both an inability to satisfy debts along with a lengthy history of not meeting financial obligations commencing in about 2012. His declared willingness to satisfy those debts is unambiguous, but his failure to take any verifiable corrective actions until after the SOR was issued greatly diminishes that willingness. AG ¶¶ 19(a), and 19(c) have been established, but, because there is zero evidence regarding Applicant's current finances or any unwillingness to satisfy his debts regardless of the ability to do so, AG ¶ 19(b) has not been established,

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue

None of the mitigating conditions apply. Applicant's initial financial difficulties were essentially caused by "poor decisions" he made about his credit – not by issues beyond his control. When questioned by the OPM investigator in November 2023, Applicant noted that his financial situation is now "ok," but he acknowledged there were "things on his credit." After his accounts became delinquent – one as far back as 2012 with most of the others from 2019 until 2023 – he did not maintain contact with his creditors and did not attempt to make any payments. Upon being questioned about the accounts, he claimed that he intends to repay the debts. In his July 2024 response to the SOR, he acknowledged that he needed to pay off his delinquent accounts and said that "with extra time given, I can pay these off one by one to improve this and get my credit situation under control." However, between his August 2023 SF 86 and the July 2024 SOR, Applicant still made no verifiable efforts to pay any of his delinquent accounts, including one cellular account with an unpaid balance of \$59 or a credit-card account with an unpaid balance of \$156. Modest income should generate modest expenses, but, although he had that extra time, Applicant seemingly failed to make any payments to his creditors. As of the closing of the record, he still has not submitted any documentary evidence to verify purported 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, before the SOR was issued, as well as until shortly after the FORM was issued, Applicant failed to maintain contact with his creditors, and failed to make any payments to his creditors 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 incurring charges and he simply ignored his creditors, even after being informally given the extra time he needed to start resolving his delinquent accounts.

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 waited, in at least one instance, from 2012 to 2024 to purportedly try to resolve one modest electric utility account, while claiming that he intended to pay off his delinquent debts. To date, despite being given the opportunities to start resolving his delinquent accounts, while he claims he has started to do so, he failed to submit any verified evidence to that effect.

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. The absence of verified 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, casts doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Whole-Person Concept

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

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

Under SEAD 4, App. A, ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Moreover, I have evaluated the various aspects of this case considering the totality of the record evidence and have not merely performed a piecemeal analysis. (See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See *a/so* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006))

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in SEAD 4, App. A. 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 some mitigating evidence such as his employment record, and promises to resolve his delinquent accounts, but that evidence is insufficient to overcome the disqualifying conditions established under Guideline F.

Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his financial considerations. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge