



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



In the matter of:)
)
) ISCR Case No. 24-00799
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

10/10/2024

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 July 28, 2023, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On October 20, 2023, he was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). On June 10, 2024, 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; 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 June 13, 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 July 3, 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 10, 2024. His response was due on August 9, 2024. Applicant timely submitted a statement with attachments to which there were no objections. The record closed on August 9, 2024. The case was assigned to me on September 27, 2024.

Findings of Fact

In his response to the SOR, Applicant admitted, with very brief 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 37-year-old prospective employee of a defense contractor for which he has been awaiting assignment as a senior principal subcontract specialist since July 2023. He was previously employed by other companies in senior sourcing (October 2017 – March 2020); and as director of digital marketing (October 2016 – October 2017). He remains unemployed after being fired for insubordination in March 2020 by an employer for only agreeing to attend meetings virtually for two days rather than meeting face-to-face with individuals who had traveled internationally during the COVID-19 pandemic. His firing occurred only days before a National Emergency was declared and travel out of Europe – the origin of the individuals who were attending the meeting – was banned. His high school education was not reported, but he received a bachelor's degree in 2012. He has never served with the U.S. military. He has never held a security clearance. 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 (SF 86); Item 3 (Enhanced Subject Interview, dated October 20, 2023); Item 4 (Default Final Judgment, dated May 23, 2022); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated August 16, 2023);

Item 6 (Verato Credit Report, dated March 24, 2024); and Item 7 (Equifax Credit Report, dated June 28, 2024).

In his SF 86, Applicant reported that he had two delinquent financial accounts that were the result of being unemployed during the COVID-19 pandemic. He stated that he remained in constant contact with the two creditors, provided periodic updates as to his employment status, and discussed his intention to resolve them once he secured new employment. During his October 2023 interview with an investigator with the U.S. Office of Personnel Management (OPM), Applicant again discussed those two accounts. He was confronted with several additional delinquent accounts that appeared to be in his name. Except for one such account about which he had no knowledge, he agreed with the information developed regarding the other accounts. He repeated his intention to resolve those accounts once he obtained new employment. (Item 3 at 4-5) During that OPM interview, as well as in his Answer to the SOR, he described his current financial situation as “dire,” but stated that he is living within his means by the good graces of his mother by assisting her in caring for his elderly (100 years old) grandmother. He has applied for hundreds of jobs, been interviewed only a few times, but has been unsuccessful with one exception, the one for which he is being sponsored.

The SOR alleged five still-delinquent accounts totaling approximately \$22,900, as set forth below:

SOR ¶ 1.a. refers to a bank holding company credit-card account with an unpaid balance of \$10,401.98 that became delinquent in April 2021 and was placed for collection and eventually became a default judgment in May 2022. (Item 3 at 31-32; Item 4; Item 5 at 4; Item 6 at 2; Item 7 at 4) The creditor advised Applicant that the account is no longer with their legal collection team but is returning to the creditor to be handled internally. Applicant reported that despite still being unemployed, he has started a repayment plan to eventually pay off the entire sum owed, which at this time had risen to \$10,756.98. He made his first \$50.00 payment on August 6, 2024. (Letter dated July 11, 2024, and Money Order dated August 6, 2024, both attached to Response to FORM) The account is in the early process of being resolved.

SOR ¶ 1.b. refers to a bank credit-card account with an unpaid balance of \$7,969 that became delinquent in October 2021 and was placed for collection and charged off. (Item 3 at 32-33; Item 5 at 4; Item 6 at 2; Item 7 at 3) A lawsuit was dismissed for lack of prosecution, and the creditor advised Applicant that the account is no longer with their legal collection team but is returning to the creditor to be handled internally. Once the change is completed, he intends to establish a repayment plan. (Response to FORM) The account is not yet in the process of being resolved.

SOR ¶ 1.c. refers to an unspecified type of bank account with an unpaid balance of \$2,712.00, now down to \$2,696.73, that became delinquent in December 2021 and was placed for collection and sold to a debt purchaser which subsequently sold the account to another debt purchaser. The SOR identified the wrong bank as the creditor in question. (Item 5 at 5; Item 6 at 2-3; Item 7 at 5) Applicant reported that despite still being unemployed, he has agreed to a repayment plan with the current debt purchaser to

eventually pay off the entire sum owed, with monthly payments of approximately \$51.00 commencing in August 2024. (Letter dated July 10, 2024, attached to Response to FORM) In the absence of documentary evidence of verified payments since August 2024, it appears that the account is not yet in the process of being resolved.

SOR ¶ 1.d. refers to bank credit-card account with an unpaid balance of \$1,169.00 that became delinquent in November 2021 and was placed for collection and sold to a debt purchaser. (Item 4 at 3; Item 5 at 3; Item 6 at 2; Item 7 at 5) Applicant failed to address this account in his Response to FORM. The account is not in the process of being resolved.

SOR ¶ 1.e. refers to a bank credit-card account with an unpaid balance of \$642 that became delinquent in February 2022 and was placed for collection and charged off. (Item 4 at 3; Item 5 at 3; Item 6 at 3; Item 7 at 6-7) Applicant reported that despite still being unemployed, he has agreed to a repayment plan with the current debt purchaser to eventually pay off the entire sum owed, with monthly payments of \$52.21 commencing in August 2024. (Letter dated July 10, 2024, attached to Response to FORM) In the absence of documentary evidence of verified payments since August 2024, it appears that the account is not yet in the process of being resolved.

Despite the SOR alleging only Applicant's five delinquent accounts, the Government has referred to an unalleged account as well: an expired automobile lease for which there is an unpaid balance of \$395.00. Applicant explained that the charge was added when he was unable to renew the lease because of his financial situation. He reported that he had settled the account with a payment of \$217.25 in July 2024. (Response to FORM) There is no evidence of financial counseling.

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*, 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 \$22,900. Applicant's history of delinquent debts appears to present either an inability to satisfy debts or a history of not meeting financial obligations, all commencing in early 2020. His declared willingness to satisfy those debts is unambiguous. AG ¶¶ 19(a) and 19(c) have been established, but AG ¶ 19(b) has not.

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(b) apply, and AG ¶ 20(d) partially applies. In early 2020, COVID-19 was considered a world-wide pandemic. Applicant was an employee of a company that refused to permit virtual attendance at work. In March 2020, only days before a national emergency was declared and travel of individuals from Europe was banned, he was expected to attend two meetings face-to-face with individuals who had recently travelled internationally. Because of his health concerns, he chose to attend those meetings virtually, rather than face-to-face. The result was that he was fired for insubordination. He has been unemployed since that time without salary, and although he had applied for hundreds of jobs, and received a few interviews, he finally achieved possible success and has been awaiting assignment as a senior principal subcontract specialist since July 2023. He managed to make payments on his accounts until October 2021 when the first one became delinquent. During this period, he has been living within his means by the good graces of his mother by assisting her in caring for his elderly grandmother. He has repeatedly expressed his intention to resolve his delinquent accounts once he obtained new employment.

SEAD 4 recognizes the situation in which Applicant finds himself. The financial problems were exclusively, not merely largely, beyond Applicant's control with several significant factors: a world-wide COVID-19 pandemic; Applicant's health fears regarding meeting face-to-face with individuals who had recently travelled internationally; his employer's rigid position regarding virtual work versus in the office work during the pandemic; and Applicant's loss of employment and subsequent inability to obtain new employment. His accounts did not become delinquent until well after he was fired and COVID-19 pandemic limitations were enacted. While Applicant's reluctance to attend the meetings in March 2020 might have been questioned at that time, subsequent events and better information would have prevented the actions of his employer. As an Administrative Judge, I am taking official notice of the world-wide impact of COVID-19 where schools were closed, meetings were avoided, millions of individuals died, and virtual training and work were made routine practices. Applicant's reluctance to attend the meetings face-to-face, his employer's action in firing him, and his inability to continue maintaining his

accounts in a current status while unemployed do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

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, although Applicant maintained contact with his creditors, and has agreed to several small monthly payments, it is apparent that he was unable to fully address his delinquent debts because of his unemployment status and zero income. 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, with zero income, Applicant was simply unable to resolve the accounts, but he continued to maintain contact with his creditors to update them on his employment status.

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 once he obtained employment. He did establish some modest verifiable repayment plans with evidence of one payment to one of his creditors.

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)).

While there is no verifiable evidence of financial counseling or a budget, Applicant has submitted several repayment plans that have been agreed to by some of his creditors. Those repayment plans along with his verifiable payment effort with at least one creditor, reflect positive actions by him. Applicant’s inability to make larger payments to all of his creditors under the circumstances does not cast doubt on his current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

Under the present circumstances, I believe Applicant should be extended an exception – an additional period to start addressing his delinquent debts – perhaps to start resolving the smaller ones in the amounts of \$642.00 and \$1,169.00. The DCSA CAS can require him to submit periodic updates on his efforts to resolve his delinquent accounts. Should such efforts be successful once Applicant assumes the position for which he is being sponsored as a senior principal subcontract specialist, additional security monitoring under SEAD 4, App. C, Condition C, under the DOD Continuous Vetting Program may be appropriate until the issue is finally resolved within a reasonable period of extended time:

Eligibility granted or continued, despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s). Such measures include, but are not limited to, additional security monitoring, access restrictions, submission of periodic financial statements, or attendance at counseling sessions.

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 obviously some evidence against mitigating Applicant's financial considerations. He failed to maintain five accounts in a current status allowing them to become delinquent. Accounts totaling \$22,900 were placed for collection.

The mitigating evidence under the whole-person concept is simply more substantial and compelling. Applicant is a 37-year-old prospective employee of a defense contractor for which he has been awaiting assignment as a senior principal subcontract specialist since July 2023. He was previously employed by other companies in senior sourcing; and as director of digital marketing. He remains unemployed – without income – after being fired in March 2020 by an employer for only agreeing to attend meetings virtually for two days rather than meeting face-to-face with individuals who had traveled internationally during the COVID-19 pandemic. His firing took place only days before a National Emergency was declared and travel of individuals from Europe was banned.

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 efforts to resolve his debts has been stalled by his unemployment. He has repeatedly declared his intention to resolve his debts once he obtains employment, and he has a job waiting for him. He has entered into agreements to make modest payments to some creditors until he gets his job, and he has already made one verifiable payment to one creditor. His plan is reasonable under these circumstances. 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. Additional security monitoring under SEAD 4, App. C, Condition C, under the DOD Continuous Vetting Program may be appropriate until the issue is finally resolved within a reasonable period of extended time. 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.e.:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Administrative Judge