



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



In the matter of: )  
 )  
 --- ) ISCR Case No. 15-08151  
 )  
 Applicant for Security Clearance )

**Appearances**

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

10/03/2017

---

**Decision**

---

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

**Statement of the Case**

On March 23, 2015, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On December 9, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order 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 the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006.<sup>2</sup> The SOR

---

<sup>1</sup> Item 2 (e-QIP, dated March 23, 2015).

alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the interests of national security 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.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated December 30, 2016, Applicant responded to the SOR and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on January 24, 2017, and he was afforded an opportunity, within a period of 30 days 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 previous Adjudicative Guidelines applicable to his case. Applicant received the FORM on January 31, 2017. Applicant's response was due on March 2, 2017. As of October 1, 2017, Applicant had not submitted any response to the FORM. The case was assigned to me on October 1, 2017.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (¶¶ 1.a. through 1.h.) of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 26-year-old employee of a defense contractor. He has served as an order filler/laborer since April 2015, but previously worked for the same employer for several months in 2014. He also worked part-time, and later full-time, as a teacher at a childcare center from March 2010 until April 2015. He is a 2010 high school graduate. Applicant has never served in the U.S. military. He has never held a security clearance. Applicant has never been married, but has resided with a cohabitant since December 2012. He has one daughter, born in 2014, and his cohabitant has one son, born in 2009.

---

<sup>2</sup> Effective June 8, 2017, by Directive 4 of the Security Executive Agent (SEAD 4), dated December 10, 2016, *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, were established to supersede all previously issued national security adjudicative criteria or guidelines. Accordingly, those guidelines previously implemented on September 1, 2006, under which this security clearance review case was initiated, no longer apply. In comparing the two versions, there is no substantial difference that might have a negative effect on Applicant in this case.

## Financial Considerations<sup>3</sup>

It appears that Applicant's finances became an issue in 2011 when he was admitted to a hospital emergency room. He completed paperwork to apply for financial aid, but he never received a bill or any collection notices until 2012. When he attempted to enlist in the U.S. Army in 2012, he was required to undergo a medical examination for a certain medical condition, and he was under the impression the U.S. Army would cover the expenses. He was subsequently denied enlistment, and he was advised that he was responsible for the expenses. Applicant was unable to pay his various medical accounts, as well as a traffic citation because he had insufficient funds to do so. In September 2015, when he was interviewed by an investigator from the U.S. Office of Personnel Management (OPM), he indicated he would contact most of his creditors or collection agents to make payment arrangements, and pay off the accounts. He claimed he has sufficient funds for his current accounts, as well as the expenses for his cohabitant's son, but because his wages are not high, and his cohabitant's wages are not high, he cannot address the delinquent accounts at the present time. He did indicate that he intends to pay his debts in the future.<sup>4</sup> He also indicated that he might seek financial guidance. There is no evidence that he ever did so.

The SOR identified eight purportedly delinquent debts that had been placed for collection, as generally reflected by his two 2015 credit reports. Those debts, totaling approximately \$11,707, their current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant's comments regarding same, are described below.

(SOR ¶¶ 1.a., 1.c., and 1.f.): These are three medical accounts with unpaid balances of \$2,091, \$605, and \$7,180 that were placed for collection with the same collection agent. Applicant admitted in his Answer to the SOR that the accounts remain delinquent. There is no evidence to indicate that Applicant has made any efforts to contact the creditor or collection agent to resolve them. The accounts have not been resolved.

(SOR ¶ 1.b.): This is a cellular telephone account with an unpaid balance of \$921 that was placed for collection. Applicant initially denied knowledge of the account or the collection agent. In his Answer to the SOR, Applicant admitted that the account remains delinquent. There is no evidence to indicate that Applicant has made any efforts to contact the creditor or collection agent to resolve it. The account has not been resolved.

(SOR ¶ 1.d.): This is an Internet cable account with an unpaid balance of \$265 that was placed for collection. In his Answer to the SOR, Applicant admitted that the account

---

<sup>3</sup> General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 7, 2015; Item 5 (Equifax Credit Report, dated October 27, 2015); Item 3 (Personal Subject Interview, dated September 15, 2015).

<sup>4</sup> The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sep. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

remains delinquent. There is no evidence to indicate that Applicant has made any efforts to contact the creditor or collection agent to resolve it. The account has not been resolved.

(SOR ¶¶ 1.e., 1.g., and 1.h.): These are three medical accounts with unpaid balances of \$112, \$318, and \$215 that were placed for collection with the different collection agents. Applicant admitted in his Answer to the SOR that the accounts remain delinquent. There is no evidence to indicate that Applicant has made any efforts to contact the creditors or collection agents to resolve them. The accounts have not been resolved.

It is not known what Applicant's financial resources may be because he did not submit a Personal Financial Statement to reflect his net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of any financial counseling. There is no evidence that Applicant ever contacted his creditors or collection agents either to research and validate the accounts, or to arrange repayment plans. There is no evidence that Applicant ever disputed the accounts either with the creditors or the credit reporting agencies. Applicant offered no evidence to indicate that his financial situation is now under control.

## **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."<sup>5</sup> 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."<sup>6</sup>

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,

---

<sup>5</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>6</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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.”<sup>7</sup> 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.<sup>8</sup>

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.”<sup>9</sup>

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.”<sup>10</sup> 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.

---

<sup>7</sup> “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).

<sup>8</sup> See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>9</sup> *Egan*, 484 U.S. at 531.

<sup>10</sup> See Exec. Or. 10865 § 7.

## 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), an "inability to satisfy debts" is potentially disqualifying. In addition, AG ¶ 19(b) may apply if there is an "unwillingness to satisfy debts regardless of the ability to do so." Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise concerns. Applicant's credit reports reflect eight delinquent accounts. AG ¶¶ 19(a), 19(b), and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts."<sup>11</sup>

---

<sup>11</sup> The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In addition, AG ¶ 20(e) may apply if “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.”

I have concluded that none of the mitigating factors apply. Rather than addressing the eight accounts, Applicant simply took no action to resolve them, claiming he had insufficient funds to do so. The Government is entitled to rely on credit reports in these proceedings as ordinary business record exceptions to the hearsay rule. There was no evidence submitted “to establish that those documents were improperly or irregularly produced, or produced in circumstances that would render their reliability suspect.”<sup>12</sup> Moreover, with respect to credit reports, the Appeal Board stated:<sup>13</sup>

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations . . . At that point, the burden shifts to Applicant to establish either that [he or she] is not responsible for the debt or that matters in mitigation apply.

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 each and every debt 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 or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. Mere promises to pay debts in the future, without further action, are insufficient.

There is no good-faith effort to contact the creditors to resolve the accounts.<sup>14</sup> There is no evidence that the conditions that may have resulted in the financial issues

---

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.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(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. June 4, 2001)).

<sup>12</sup> ISCR Case No. 07-08925 at 3 (App. Bd. September 15, 2008).

<sup>13</sup> ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010); ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006).

<sup>14</sup> “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-

were largely beyond Applicant's control. There is no evidence of financial counseling, a budget, or any disputes. Applicant offered no evidence to indicate that his financial situation is now under control. Equally as important, there is no evidence that Applicant acted responsibly under the circumstances, and that failure to do so continues to cast doubt on his current reliability, trustworthiness, and good judgment.<sup>15</sup>

### **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.<sup>16</sup>

There is some evidence mitigating Applicant's conduct. There is no evidence of misuse of information technology systems, or mishandling protected information. He has been employed by the same employer continuously since April 2015, but previously worked for it for several months in 2014.

The disqualifying evidence under the whole-person concept is simply more substantial. There are eight delinquent accounts alleged in the SOR with a combined unpaid balance of \$11,707. Although Applicant was questioned about the delinquent accounts by the OPM investigator in September 2015, he made no efforts since that time to address any of his delinquent accounts, including one with the modest sum of \$112. He failed to dispute any of them. It appears that he simply ignored the debts, choosing

---

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.

<sup>15</sup> See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

<sup>16</sup> 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).



instead to focus on his current accounts. Considering the lack of evidence regarding his current finances, and the absence of character evidence regarding Applicant's honesty, integrity, and trustworthiness, I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:<sup>17</sup>

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 has demonstrated a very poor track record of debt reduction and elimination efforts, avoiding the debts in his name, and failing to promise to take any corrective actions. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of 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.h:              **Against Applicant**

---

<sup>17</sup> ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

### **Conclusion**

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

---

ROBERT ROBINSON GALES  
Administrative Judge