



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00853

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

12/04/2018

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 October 5, 2016, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On April 6, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him, under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), (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, effective June 8, 2017.

The SOR 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 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.

It is unclear as to when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated April 23, 2018, 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 July 16, 2018, 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 Adjudicative Guidelines applicable to his case. Applicant received the FORM on July 30, 2018. Applicant's response was due on August 29, 2018. Applicant timely submitted two documents in response to the FORM, and they were admitted as Applicant exhibits, without objection. The case was assigned to me on November 19, 2018.

Findings of Fact

In his Answer to the SOR, Applicant admitted with comments three of the factual allegations in the SOR (SOR ¶¶ 1.a. through 1.c.). He denied the remaining allegations. Applicant's admissions and comments 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 65-year-old employee of a defense contractor. He has been serving in a construction sales, management, and design position with his current employer since March 2000. Applicant's educational background was not reported. He never served with the U.S. military. He has never held a security clearance. Applicant was married in September 1976. He has five adult children, born in 1980, 1991, and 1993, as well as twins born in 1982.

Financial Considerations¹

When Applicant completed his e-QIP in October 2016, he referred to a simple "loss of income" with respect to several of his delinquent accounts, without offering any further explanations.² During his personal subject interview conducted by an investigator from the U.S. Office of Personnel Management (OPM) in December 2017, he again attributed

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (Applicant's Response to the FORM, April 23, 2018); Item 3 (e-QIP, dated October 5, 2016); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated November 4, 2016); Item 4 (Equifax Credit Report, dated February 20, 2018); Item 6 (Personal Subject Interview, dated December 21, 2017).

² Item 3, *supra* note 1, at 30-31.

his financial issues to an inability to make payments due to a loss of income.³ He also stated that he has made payment agreements in order to satisfy all of his debts,⁴ but although he was requested to furnish documentation to support his contentions regarding payment plans and payments, he failed to do so. In his April 2018 Answer to the SOR, Applicant stated that his financial problems were caused by a “substantial decrease in [his] income,” again without offering any additional explanations.⁵

The SOR identified seven purportedly delinquent accounts that had been placed for collection or charged off as generally reflected by Applicant’s 2016 or 2018 credit reports. Those debts, totaling approximately \$164,457, are described below:

(SOR ¶ 1.a.) This is a credit-card account with an unpaid balance of \$30,364 that was placed for collection.⁶ Although Applicant claimed that he was in communication with the creditor to resolve the account, he submitted no documentation to support his claim, and he did not indicate that he has made any continuing efforts to make payments.⁷ The account has not been resolved.

(SOR ¶¶ 1.b. and 1.c.) These are two credit-card accounts with the same bank with unpaid balances of \$21,742 and \$16,933 that were placed for collection and charged off.⁸ Applicant’s position with respect to both accounts is that it was the creditor’s choice to write off the accounts, and he has made no efforts to resolve them.⁹ The accounts have not been resolved.

(SOR ¶¶ 1.d. and 1.f.) These are two medical accounts with unpaid balances of \$835 and \$771 that were placed for collection.¹⁰ Applicant initially claimed that the smaller account was his wife’s medical bill and that it had been paid off, but when he was requested to furnish documentation to support his contention, he failed to do so.¹¹ In his Answer to the SOR he claimed to have no knowledge of the accounts, and stated that he had requested supporting documentation.¹² In his Response to the FORM, he claimed

³ Item 6, *supra* note 1, at 6.

⁴ Item 6, *supra* note 1, at 6.

⁵ Item 2, *supra* note 1, at 3.

⁶ Item 4, *supra* note 1, at 2.

⁷ Item 2, *supra* note 1, at 3.

⁸ Item 5, *supra* note 1, at 5, 14; Item 4, *supra* note 1, at 2.

⁹ Item 2, *supra* note 1, at 3; Applicant’s Response to the FORM, dated August 13, 2018, at 1.

¹⁰ Item 4, *supra* note 1, at 2; Item 5, *supra* note 1, at 6.

¹¹ Item 6, *supra* note 1, at 5.

¹² Item 2, *supra* note 1, at 3

that his wife was working with the creditors in an effort to resolve them,¹³ but he submitted no documentation to support his claim, and he did not indicate that he has made any continuing efforts to make payments. The accounts have not been resolved.

(SOR ¶¶ 1.e. and 1.g.) These are purportedly two student loans co-signed for his daughter with unpaid balances of \$53,269 and \$40,543 that were placed for collection.¹⁴ The larger loan was originally issued by a bank and eventually transferred to a company that services and collects on student loans. Applicant contends that the two loans are actually two different snapshots of the same loan, and that the loan had changed hands over time.¹⁵ It appears that he is correct, for his 2016 credit report lists the larger loan two times (once by Experian and once by Equifax) with the exact account numbers, exact balances, and different creditors and some inconsistencies regarding timeframes, and the smaller loan is listed once (by TransUnion).¹⁶ Applicant's 2018 credit report lists two separate student loans, each with a different servicer, with exact balances, but indicating that one of the creditors had sold or transferred the account to the other creditor.¹⁷ Applicant submitted three receipts indicating that he had made payments of \$596 in February 2018; \$430 in March 2018; and \$430 in April 2018.¹⁸ The loan is in the process of being resolved.

Applicant failed to indicate his monthly net pay, monthly expenses, debt payments, or if he has any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of financial counseling. Applicant offered no evidence to indicate that his "loss of income" has been reversed, that his financial situation has improved, or that it is now under control. Furthermore, he has failed to indicate any intention to resolve the two credit-card accounts that had been charged off.

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."¹⁹ 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

¹³ Applicant's Response to the FORM, *supra* note 9, at 1.

¹⁴ Item 5, *supra* note 1, at 6, 14.

¹⁵ Item 6, *supra* note 1, at 5-6; Item 2, *supra* note 1, at 3.

¹⁶ Item 5, *supra* note 1, at 6, 14.

¹⁷ Item 4, *supra* note 1, at 2.

¹⁸ Item 2 (Receipts, various dates), attached to Applicant's Answer to the SOR.

¹⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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.”²⁰

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.”²¹ 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.²²

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

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

²¹ “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).

²² See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”²³

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.”²⁴ 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.

²³ *Egan*, 484 U.S. at 531.

²⁴ See Exec. Or. 10865 § 7.

Applicant had six (when discarding the duplicate listings)²⁵ delinquent accounts that had been placed for collection or charged off. As to the two accounts that had been charged off, he has simply stood by and ignored those accounts because the creditor had chosen to write them off. 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;²⁶

(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;²⁷ 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

²⁵ As noted above, SOR ¶¶ 1.e. and 1.g. refer to one account.

²⁶ 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. Sep. 13, 2016)).

²⁷ 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.' 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)).

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(b) minimally applies, but none of the remaining mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." Applicant attributed his financial difficulties to an otherwise unspecified "loss of income," without documentary support. He also claimed to have insufficient funds to maintain his financial responsibilities. As noted above, with one exception associated with the student loans, there is no documented proof that Applicant has actually contacted his creditors or collection agents to pay or settle any of his delinquent debts.

There is no documentation to reflect that Applicant made any efforts, before or after he was interviewed by OPM, or before or after the SOR was issued in April 2018, to: obtain financial counseling from a legitimate and credible source, such as a non-profit credit counseling service; dispute his delinquent accounts with the credit reporting agencies or the creditors themselves; contact his creditors to set up repayment plans; or indicate that payments had been made to his creditors.²⁸ An applicant who begins to resolve his 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.²⁹ In this instance, to date, with the exception of the student loans, there is no meaningful evidence that any corrective actions have been taken by Applicant. There is little evidence to conclude that Applicant's finances are under control.

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.

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):

²⁸ See ISCR Case No. 12-01335 at 5 (App. Bd. Dec. 29, 2017).

²⁹ 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).

(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.³⁰

There is very little evidence mitigating Applicant's conduct. Applicant is a 65-year-old employee of a defense contractor. He has been serving in a construction sales, management, and design position with his current employer since March 2000. Applicant has been making payments on the student loans for only three months.

The disqualifying evidence under the whole-person concept is more substantial. Applicant has six delinquent accounts that had been placed for collection or charged off. Among those debts are two credit cards, totaling \$38,675, that were charged off, and Applicant has shown no intention to resolve them, claiming instead that the creditor chose to write them off. Also, there are two medical accounts that he has known about for some time, but other than undocumented indications that Applicant's wife was working on them, no resolution has taken place. Another delinquent credit-card account remains with an unpaid balance of over \$30,000. Applicant has not obtained financial counseling. There is no evidence of a budget. Applicant offered no evidence to indicate that his "loss of income" has been reversed, that his financial situation has improved, or that it is now under control.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:³¹

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."

³⁰ 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).

³¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 an extremely poor track record of debt reduction and elimination efforts, seemingly avoiding the debts in his name. 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.d.:	Against Applicant
Subparagraphs 1.e. and 1.f.:	For Applicant
Subparagraph 1.g.:	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