



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04304

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

10/09/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on February 21, 2013. He signed his e-QIP on March 6, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on February 7, 2015, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated March 13, 2015, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on June 17, 2015. Applicant received the FORM on July 30, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on September 21, 2015, and I received it on September 24, 2015. The Government submitted six exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1.

Procedural Ruling

Based on the Government's evidence in Item 7, SOR allegation 1.d is amended to reflect that the Internal Revenue Service (IRS), not the state, filed a tax lien in the amount of \$3,402, not \$4,524 as alleged, against Applicant in his state of residence.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a. 1.b and 1.d of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.c and 1.e of the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 44 years old, works as a manager for a DOD contractor. He has worked for his current employer since 1991 in different positions. He moved from one state to another state several times for his job. He has held a security clearance since approximately 2005. The record lacks any evidence that he has mishandled classified information or violated company rules or proprietary procedures.²

Applicant graduated from high school in 1989, and he attended college from September 1989 until January 1991. Applicant returned to college in 2012, and at the

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 3; Item 4.

time he completed his e-QIP, he was enrolled in college. Applicant and his wife married in 2004. They have two sons, who are nine and six years old.³

The records does not contain any evidence showing Applicant's monthly income and expenses. On his e-QIP, Applicant listed his foreclosure and a debt with his former homeowners association. (Item 3) Neither debt is listed in the SOR.

The SOR alleges four collection debts totaling \$8,611 and one state lien for \$4,524.⁴ The lien filings documentation shows that the IRS filed a tax lien on December 16, 2013.⁵ The same document shows that the IRS released the lien on November 12, 2014. The IRS will release a lien when a debt is paid.⁶ The release of the lien by the IRS supports an indication that he tax debt is paid as Applicant stated.⁷

Applicant admitted SOR allegation 1.a (\$3,802). He enrolled in college classes, which he understood his employer had paid. Due to his work schedule, he was unable to continue with the classes. He later learned that he had incurred a debt for these classes. He advised that he developed a payment plan, but he did not provide a copy of the plan or of his payments made under the plan. He also admitted the \$2,203 credit card debt in SOR allegation 1.b. He believes that this debt was included in his foreclosure. He has not provided any documentation supporting his position that this credit card debt was included in his foreclosure.⁸

Applicant denied owing the \$565 debt in SOR allegation 1.c, indicating that he paid this debt. He did not provide any documentation showing that this debt is resolved. He denied any knowledge of the \$2,041 debt in SOR allegation 1.e. The debt did not appear on the credit report he reviewed (not in the record), although it is shown on the Government's credit report dated September 4, 2013. This credit report reflects that Applicant disputed this debt, which has a date of last activity in 2007. The result of his dispute is unknown; however, this debt is not shown on his 2014 credit report. The credit reports of record reflect that Applicant generally pays his bills in a timely manner.⁹

³Item 3.

⁴A failure to file his tax returns is not alleged in the SOR, only a debt owed.

⁵The documentation submitted identifies the IRS as the creditor and indicates that a federal tax lien was filed in Applicant's state of residence. Item 7.

⁶www.irs.gov.

⁷Items 7.

⁸Item 2; Item 4.

⁹Item 4 - Item 6.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing 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. According to AG ¶ 2(c), 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 decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

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. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect or 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed financial problems over a period of time. At the time of the issuance of the SOR, the evidence showed that most of his debts remained unpaid. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated 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.

Applicant failed to indicate that any circumstances beyond his control created his debts.¹⁰ Thus, AG ¶ 20(b) is not applicable. Applicant paid his tax debt, and the IRS released its lien less than one year after filing it. AG ¶ 20(c) applies to SOR allegation 1.d. AG ¶ 20(e) applies to SOR allegation 1.e. Because Applicant did not recognize the creditor or the debt, he had a reasonable basis to dispute this debt, which no longer appears on his credit report. Under the mitigating conditions, Applicant has shown that he paid or resolved \$5,643 of the \$12,213 in debt alleged after the SOR was amended.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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 AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.¹¹

¹⁰The inability to sell his house after moving from state to another because of his job is a circumstance beyond his control. The resulting foreclosure on his home is not an issue in this case as the debt is resolved.

¹¹In assessing whether an applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has "... established a plan to resolve his financial problems and taken significant actions to implement that plan."

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In his response to the SOR, Applicant indicated that he resolved or did not owe the debts listed in the SOR. Although Applicant failed to provide documentation to support his assertions that his SOR debts are resolved, the evidence of record supports his position on two debts (1.d and 1.e) that total 46% of the alleged unpaid debts. His assertions that he is resolving his \$3,802 education debt (1.a) through a payment plan and that he paid the \$565 debt (1.c) are credible given that record evidence supported his assertions as to allegations 1.d and 1.e. He has resolved or is resolving an additional \$4,367. His argument that he resolved a \$2,203 credit card through foreclosure is not reasonable or supported by documentation. Applicant has not violated procedures for handling classified information or his company rules. He is married and has two children. He has focused his attention on providing a stable domestic environment for his family. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) His one remaining unresolved debt of \$2,203 cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While one debt remains unpaid, it is insufficient to raise security concerns because the credit reports of record support the conclusion that he generally pays his obligations. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

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

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 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 a security clearance is granted.

MARY E. HENRY
Administrative Judge