



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



In the matter of:)	
)	
)	ISCR Case No. 14-04998
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: Ryan C. Nerney, Esquire

09/30/2015

Decision

HENRY, Mary E., Administrative Judge:

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

Statement of the Case

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on March 6, 2014, which he signed on March 7, 2014. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on February 4, 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 on February 11, 2015, and he answered it on March 2, 2015. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 27, 2015, and I received the case assignment on June 8, 2015. DOHA issued a Notice of Hearing on June 25, 2015, and I convened the hearing as scheduled on July 16, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE F, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 24, 2015. I held the record open until August 16, 2015, for Applicant to submit additional matters. Applicant timely submitted AE G, which was received and admitted without objection. The record closed on August 16, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.b of the SOR. His admission is incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a, and 1.c - 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 39 years old, works as the Director of an aviation program for a DOD contractor. Applicant began working for his current employer in 2003, and he has been in his current position for one year. In 2007, his employer selected him to participate in a leadership program. A former Office of Personnel Management (OPM) security clearance investigator wrote a letter of recommendation for Applicant. She has known him for five years and describes him as an individual who is respectful of the importance of protecting information and has never exhibited behavior that was not consistent with national security. To the best of her knowledge, he has never broken any laws or exhibited poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations. She considers him reliable and trustworthy to protect classified information.²

Applicant graduated from high school. He holds a bachelor's degree in general engineering science and a bachelor's degree in electrical engineering. He is single, but

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).

²GE 1; AE C; Tr. 18-21.

he was engaged in 2006 to his long-time girlfriend. The engagement and relationship ended in 2009.³

Applicant currently earns \$13,905 a month in gross income, and he receives \$9,418 a month in net income after deductions for taxes, social security, retirement payments, and insurances. He also receives \$1,395 in rent from a property he owns. His monthly expenses include \$1,850 for rent, \$1,019 for the mortgage on his rental property, \$800 for groceries, \$40 for clothing and dry cleaning, \$235 on utilities, \$264 on gasoline and car insurance, \$249 on insurance, \$1,960 on miscellaneous matters, \$578 on education loans, and \$582 on an automobile loan (he drives a 2008 car). His monthly expenses total \$7,945, leaving \$2,868 available for debt payment.⁴

In 2009, Applicant's then fiancée started a business. She also worked, but her income was insufficient to fund the business and pay her share of household expenses. He provided financial assistance to her, often using a credit card. When their relationship ended and she moved, he became responsible for all the household expenses. He fell behind on the payment of many debts, including his mortgage and credit cards, because at that time, he lacked sufficient income to meet all his expenses. He worked with the mortgage lender and renegotiated his mortgage, which prevented foreclosure on his house. His mortgage remains current as reflected in the credit reports. One by one, Applicant paid the past due amounts on other past-due debts, except one credit card. She has refused to pay the debt.⁵

Applicant contacted the creditor in SOR allegation 1.b (\$24,473) about monthly payments on his debt. Initially, the creditor demanded full payment of the debt, and later requested monthly payments of between \$800 and \$1,000 a month, which he could not afford to pay at the time. More recently, this creditor decided to forgive his indebtedness and issued a form 1099-C for the full debt on December 31, 2014. The debt forgiven will be included as his income for the tax year 2014. Applicant's accountant obtained an extension of time to file his 2014 income tax return.⁶ His 2014 income tax return has not yet been filed.⁷

The four remaining SOR debts total \$358 and became past due between 2011 and March 2014. Like his statement to the investigator from the Office of Personnel Management (OPM), Applicant expressed no knowledge of these small debts. He disputed the debts and a current account unknown to him on line with the credit

³Tr. 8-19, 40.

⁴AE D.

⁵GE 2; Tr. 26-31.

⁶The Internal Revenue Service normally grants the first extension of time for six months, making Applicant's 2014 income tax return due on October 15, 2015.

⁷GE 2; AE G; Tr. 26-31.

reporting bureaus. He did not keep a copy of his disputes; however, the credit reports dated April 24, 2015 and June 18, 2015 do not list these debts or the disputed current account. Applicant received a letter from the creditor in allegation 1.d (\$100) advising that it was removing the debt from his credit reports.⁸

Just prior to the hearing, Applicant contacted a credit counseling company that would assist him in resolving the large SOR debt. Given that he has received a form 1099-C, this may not be necessary. He planned to talk with his accountant about the resolution of this debt.⁹

Applicant indicated that since 2009, he has changed his view on money management. He places the maximum amount of money allowed by law into his retirement savings, and he is putting aside savings equal to one year's worth of expenses. He also talks with any serious lady friend about money and has ended two relationships because of a differing view.¹⁰

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

⁸GE 2; GE 3; AE A; AE B; Tr. 22-26.

⁹AE F; AE G; Tr. 30-32.

¹⁰Tr. 34 -36.

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 when his engagement ended in 2009 and his fiancée moved out of their home. He was unable to pay all his bills for a time. The above disqualifying conditions are applicable.

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:

(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, 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; 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's financial problems began when his engagement ended in 2009, causing a loss of household income and resulting in his inability to pay all his bills and expenses. He contacted his mortgage lender and worked out a modification of his mortgage, which prevented a foreclosure on his house. His mortgage is current. He paid several smaller bills during this time, but he was unable to develop a reasonable repayment plan with the creditor in allegation 1.b. He acted reasonably under the circumstances by contacting his creditors and resolving those debts that he could resolve. Less than a year ago, the creditor in allegation 1.b decided to forgive this indebtedness and issued a form 1099-C. The debt forgiven will be included as income for the tax year 2014. Applicant financial problems occurred during a single period of time six years ago after he and his fiancé e ended their relationship. AG ¶¶ 20(a) and 20(b) are applicable.

Applicant pays his customary living expenses. Although small, Applicant disputed the remaining SOR debts because the debts were unknown to him. He also disputed an account listed as current on his credit report because he did not recognize the account. He had a legitimate reason to dispute these debts, which have been removed from his credit report. These debts are still legally collectible and too new to drop off his credit report. Thus, the absence of the debts from his 2015 credit reports is the result of his dispute. AG ¶¶ 20(c) and 20(e) are applicable.

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

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." 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.

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 reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant sought to help his former fiancée build her business. When they ended their engagement, she left him with all the household bills and a large credit card debt. She has refused to repay this debt. Since helping her, Applicant has changed his approach to money. He saves for retirement, and he is saving enough money to pay a full year of expenses should he be unable to work for any reason. He also discusses finances with any woman he is seriously dating. He understands fully the problems from 2009 and seeks not to repeat these problems. His bills are current, and his debts are resolved. He does not live extravagantly. In reviewing all the evidence of record and Applicant's actions, his past debts 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 position of trust. They do not.

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
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