



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00186
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

01/14/2015

**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 September 1, 2010 and on June 13, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 18, 2014, 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 May 2, 2014. He submitted an undated, notarized, written response to the SOR allegations, which DOD received on May 16, 2014. 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 August 13, 2014. Applicant received the FORM on December 4, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted an undated response, which Department Counsel received about December 18, 2014. The hearing office for the Defense Office of Hearings and Appeals (DOHA) assigned this case to me on January 6, 2015. The Government submitted nine exhibits, which have been marked as Items 1-9 and admitted into the record. Applicant's response to the SOR has been marked as Item 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. 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 54 years old, works overseas as an electronics technician for a DOD contractor. He began his current employment in May 2013. Prior to this position, Applicant worked in heavy maintenance for many years. He served in the United States Army from September 1978 until March 1995. He received an honorable discharge. In 1986, he sustained an injury, which resulted in a 70% service-related disability from the Department of Veterans Affairs.<sup>1</sup>

Applicant finished high school and completed an associate's degree in August 1986. He continues to attend training programs to upgrade his skills. Applicant married his first wife in May 1981, and they divorced in 1983. He married his second wife in 1988, and they divorced in 1992. He married his third wife in 2001, and they divorced in 2007. He has one son, who is 25 years old.<sup>2</sup>

Applicant's financial problems started around 2005 or 2006, when the economic downturn began. At that time, Applicant worked as a road service technician. Work began to slow down with a commensurate reduction in his income. In 2006, Applicant and his third wife separated. Their divorce finalized in April 2007. While moving through their divorce process, Applicant injured his neck on the job and began receiving workers compensation benefits. Later, the workers compensation agency disputed his

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<sup>1</sup>Items 3 and 4.

<sup>2</sup>Items 4, 5, and 6.

injury and stopped his benefits. Thus, Applicant had only his service disability income. He retained the services of a lawyer. After one and one-half years of unemployment, Applicant returned to work. He was heavily indebted at that time. By 2009, Applicant was not working because of the economy. He moved many miles to another area of the country to “start again”.<sup>3</sup>

Applicant and his third wife purchased a home around 2001 and refinanced the home in 2004. After they decided to separate, his wife and her son lived upstairs, and Applicant lived downstairs. His wife blocked the efforts to sell the house, and after a time, she stopped paying any expenses related to the house. She refused to agree to a short sale of the house, and she did not cooperate on pricing the house to sell. As a result, the lender foreclosed on the house. In his personal subject interview, Applicant stated that he did not know if there was a deficiency balance on his mortgage following foreclosure. The July 2013 and the February 2014 credit reports reflect that his mortgage was under a partial payment plan, had a past-due amount, and showed no deficiency balance after foreclosure. Applicant has not mentioned the plan. Applicant provided documentation mailed in June 2014 from the state where he lived with his third wife advising that he may be entitled to a payment of “at least \$700” from a settlement of a class action filed by the state regulators against the mortgage creditor in SOR allegation 1.d. Applicant has not indicated that he completed the forms to submit a claim or that he received any payment from the settlement. The impact of the lawsuit and any settlement of it on any possible deficiency on his mortgage is unknown.<sup>4</sup>

The SOR identified six unpaid debts based on credit reports dated September 17, 2010, July 13, 2013, and February 18, 2014. The credit reports reflect that Applicant paid two collection accounts and one past-due account not listed in the SOR. The 2010 and 2013 credit reports indicate that the debt in SOR allegation 1.f (\$2,993) was sold or transferred to another creditor, and the account is closed with the original creditor. A second company bought the debt. Applicant provided proof that he paid this debt with his response to the SOR. The debt is not listed on the February 2014 credit report.<sup>5</sup>

Applicant paid the debts listed in SOR allegations 1.a (\$451), 1.b (\$105); 1.c (\$106), and 1.e (\$381).<sup>6</sup> The SOR also alleges that he did not file his tax return for tax year 2012. Applicant advised that he did not timely file his tax return for the tax year 2012 because he was tax exempt due to his overseas status and on the advice of his tax preparer. He and the tax preparer were waiting for information from the Internal Revenue Service (IRS) about additional taxes he may owe on his 2011 tax return. After the IRS notified him about how much he owed for unpaid taxes, penalties, and interest for the 2011 tax year, Applicant filed his 2012 federal tax return on September 30, 2013.

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<sup>3</sup>Item 3.

<sup>4</sup>Items 3 and 6; AE A.

<sup>5</sup>Item 3 p. 12; Items 7, 8, and 9.

<sup>6</sup>Item 3; AE A.

He received a \$432 refund, which the IRS applied to his 2011 tax debt. Between June 2014 and December 3, 2014, Applicant paid the \$4,000 tax debt for the tax year 2011.<sup>7</sup>

The record lacks any evidence that Applicant is receiving or has received credit counseling. The credit reports of record reflect that Applicant has not incurred any new, unpaid debts since early 2010.<sup>8</sup>

### **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

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<sup>7</sup>Items 3 and 6; AE A.

<sup>8</sup>Items 8 and 9.

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;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant developed significant financial problems when he and his wife separated, he became injured on the job, and his work declined when the economy slumped. He incurred delinquent debts as a result, which had not been resolved when the SOR was issued. He filed his 2012 tax return five months late. These three 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems began when the economy began to decline in 2006. The economic decline negatively impacted his ability to work full time, causing a decrease in his income. He and his wife decided to divorce in 2006, and during this process, he sustained a work injury, which prevented him from working for about 18 months. During part of this time, he had no income from workers compensation. All of these events are circumstances beyond his control. In 2009, he moved and began to rebuild his finances. He has paid seven of eight SOR debts as well as three other debts not listed in the SOR. Accepting the information in the July 2013 and February 2014 credit reports as valid, his mortgage issue is being resolved. He has acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant has not had credit counseling; however, he has taken control of his finances. His past-due debts are paid or being resolved. As soon as he received the necessary information from the IRS about his additional owed for the tax year 2011, he filed his federal income tax return for the tax year 2012. He made a good-faith effort to resolve his debts, and he did. AG ¶¶ 20(c) and 20(d) apply.

### **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.

In 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's financial problems began when his work hours, and thus his income, decreased as the economy began to slow down. He accumulated debt due to circumstances largely beyond his control, including loss of employment from a work-related injury and the loss of business as well as his divorce. Since that time, Applicant has taken affirmative action to pay or resolve the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) He has established a track record for paying his debt which is shown by the fact that he paid not only his SOR debts, but he also paid other debts before the SOR

was issued. He has not incurred any new, unpaid debts, and he has control over his income and expenses. He lives within his income.

Concerning his failure to timely file his 2012 federal income tax return by April 15, 2013, Applicant relied upon the advice of his tax preparer to wait to file his 2012 federal tax return until he received complete information from the IRS about the additional taxes he owed for the tax year 2011. Less than six months after his 2012 tax return should have been filed, he filed his 2012 federal tax return on September 30, 2013 after receiving the necessary information from the IRS about the additional taxes he owed for the tax year 2011. He has paid all the taxes owed for the 2011 tax year through voluntary payments to the IRS and the application of his 2012 refund to his unpaid taxes. The IRS did not need to file a lien or garnish his wages to force payment of his additional 2011 taxes. Applicant's reliance on his tax preparer's advice does not show a lack of judgment. He acted responsibly concerning his taxes in 2011 and 2012.

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
Subparagraphs 1.a-1.g:	For Applicant

### **Conclusion**

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

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MARY E. HENRY  
Administrative Judge