



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



In the matter of:)	
)	
)	ISCR Case No. 12-06258
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

02/10/2015

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 and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 30, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 29, 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 August 6, 2014, and he answered it on August 20, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on October 9, 2014, and I received the case assignment on October 20, 2014. DOHA issued a Notice of Hearing on November 26, 2014, and an amended Notice of Hearing (location change) on December 3, 2014. I convened the hearing as scheduled on December 9, 2014. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE M, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 18, 2014. I held the record open until January 9, 2015, for Applicant to submit additional matters. Applicant timely submitted AE N through AE CC, which were received and admitted without objection. The record closed on January 9, 2015.

Procedural Ruling

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 7)

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 36 years old, works as a security officer for a National Aeronautics and Space Administration (NASA) contractor. He began his current employment in April 2007. He began working for NASA contractors as a security officer in 2002. During these years, Applicant has received favorable performance reviews and group achievement awards.¹

Applicant graduated from high school in 1997. He has attended college periodically and continues to work towards his associate of arts degree. He graduated from police training programs in 2003 and 2005. Applicant married in 2008. He and his wife separated in December 2013. They have two sons, ages 7 and 6. His wife has a son from a previous relationship, who is 13 years old. His spouse does not receive child support for her son. During their marriage, Applicant provided financial support for her

¹GE 1; AE L; AE M; Tr. 24.

son and continues to do so. His wife did not work during the marriage and does not currently work.²

Applicant earns \$27 an hour as a security officer. His gross income for a 40-hour week is \$1,080 and his gross income for a month is \$4,320. Applicant provided a copy of his earnings statements from October 2014 through December 2014. His earnings statements indicate that his average hours for a two-week pay period range between 93 and 111 hours, depending upon various forms of wages earned and include overtime. His income fluctuates each pay period. Based on the documents provided, I conclude that Applicant's monthly gross income averages \$5,522.³ In December 2014, he received an additional \$795 in income when he cashed out his unused leave. His net monthly income averages \$3,984 plus an additional one-time payment of approximately \$665 net for his cashed out leave.⁴

Applicant contacted a financial service in October 2014, There is no evidence he hired this service, but with the information provided by them, he developed a budget to help him resolve his debts. Applicant's budget shows monthly expenses of \$1,600 for rent on the family home, \$100 for water and garbage, \$60 for gas and electric, \$70 for cable and internet, \$100 for car insurance, \$345 for a car loan, \$400 for food, \$300 for gasoline, \$30 for home supplies, and \$21 for a gym membership. Applicant pays \$1,200 a month in child support and \$600 a month in temporary spousal support, which covers the \$1,600 of rent for the family home and \$200 towards the utilities. His basic monthly expenses total \$3,106. Applicant currently lives with his parents. Applicant has an average \$875 a month to pay debts and unanticipated expenses.⁵

Applicant's financial problems began after he married. His wife generally refused to work although she held two part-time jobs for a short period of time during the marriage. Although he has been steadily employed, Applicant experienced a reduction in his work hours from 40.5 hours a week to 32.5 hours a week in 2008 for a significant time and in 2013 for about six months. In October 2013, he was furloughed along with federal workers, which impacted his ability to pay his bills. His employer paid him for the furlough time in January 2014. The reduction in hours impacted the amount he received from the union towards paying his medical, dental, vision, and other miscellaneous deductions. The amount he paid towards these benefits increased as his work hours decreased because the payment from the union is based on the hours he worked.⁶

²GE 1; GE 2; AE K; Tr. 25.

³In his budget, Applicant reflected the difference between his income without overtime and his income with overtime. AE N.

⁴AE N; AE O; Tr. 39-40.

⁵AE J; AE N; Tr. 50.

⁶AE BB; Tr. 29-35.

Early in his marriage, Applicant worked a second job for awhile to help with expenses. At the hearing, Applicant stated that he had been applying for a second job in security. After the hearing, he received an offer for a part-time security position. He will work up to 20 hours a week. His salary is not specified in the offer letter. This job will provide additional income to pay his debts.⁷

Applicant provided a copy of his tax returns from the tax years 2006 through 2013. His tax returns reflect that he earned approximately \$46,700 in 2006, \$42,300 in 2007 plus \$3,250 in unemployment benefits, \$39,000 in 2008, \$46,000 in 2009, \$54,400 in 2010, \$54,000 in 2011, \$53,502 in 2012, and \$52,000 in 2013. Except for the tax year 2008, he received a tax refund between \$660 and \$3,000 (once). He owed \$560 in 2008, which has been paid. His 2008 tax return shows a \$6,000 loss of income from 2007 and supports his testimony about a reduction in income in 2008. His income in 2009 was \$7,000 higher than 2008. He incurred a slight reduction in income in 2013.⁸

The SOR lists eight debts, totaling \$16,737. These debts are contained in at least one of the credit reports dated February 8, 2012, July 8, 2014, and October 9, 2014. SOR allegation 1.a (\$195) is for an unpaid medical bill. Applicant paid this debt at \$50 a month over four months with the last payment on April 16, 2014.⁹

SOR allegation 1.b (\$3,178) concerns a rental agreement for a residence. The original amount owed, according to the February 2012 credit report, was \$6,357. On March 6, 2014, the attorneys representing the creditor offered to settle the debt for \$3,178 through three monthly payments of \$1,059. Applicant was unable to comply with the terms of the agreement as he did not have sufficient funds. He has not paid this debt, but plans to contact the creditor when he has the funds. His budget reflects that he plans to pay \$50 a month on this debt.¹⁰

The debt in SOR allegation 1.c (\$1,849) concerns a collection account arising out of a credit card debt. Applicant initially negotiated a settlement for \$1,093, then renegotiated a settlement on this debt for \$911 and agreed to a payment plan. As of November 2014, Applicant has paid \$215 on this debt. His budget reflects he plans to pay \$132 a month on this debt until paid.¹¹

SOR allegation 1.d (\$133) relates to a \$366 collection debt. The July 2014 credit report indicated that Applicant disputed this debt as listed because a new collection

⁷AE CC; Tr. 32, 50, 59.

⁸AE S - AE Z; Tr. 33.

⁹GE 2 - GE 5; AE A; Tr. 35.

¹⁰GE 2; GE 3; AE B; AE N; Tr. 38-39.

¹¹GE 2; AE C; AE N; Tr. 40-41.

creditor now owned the debt. Applicant paid the debt as part of a settlement on August 8, 2014.¹²

SOR allegation 1.e (\$4,500) relates to a \$5,348 collection account for jewelry. After an initial contact from Applicant, the creditor offered to settle the debt for \$4,500. The creditor later offered to settle the case for \$5,000 in a letter dated October 17, 2014. Applicant was unable to pay this amount, and the debt remains unpaid. In his budget, Applicant indicates that he would pay \$50 a month on this debt.¹³

The debt in SOR 1.f (\$4,260) concerns an insurance debt. Applicant negotiated a \$50 a month payment plan on this debt. As of October 2014, he had paid \$110 on this debt. He paid \$50 on December 29, 2014. He included this \$50 payment in his budget.¹⁴

SOR allegation 1.g (\$1,922) relates to a collection account. Applicant negotiated a payment plan for \$54 a month in October 2014. He made his first payment in this amount on October 29, 2014, and he made a \$50 payment on December 29, 2014. His budget reflects that he plans to pay \$160 a month on this debt.¹⁵

The last SOR debt is allegation 1.h (\$700). Applicant negotiated a payment plan, which required him to pay \$116.66 a month for six months. As of December 29, 2014, Applicant had made three payments. His budget includes this payment and the debt should be paid by March 2015.¹⁶

Applicant has \$875 a month available to pay the agreements he negotiated. His budget indicated that he plans to pay \$558 a month to his remaining creditors. At the hearing, Applicant stated that his plan to resolve his debt was to pay his smaller debts first, then work on his larger debts. The second part of his payment plan included obtaining a second job, which he has done.¹⁷

The Government mailed interrogatories to Applicant, which he answered on March 18, 2014. The interrogatories identified a number of debts not listed in the SOR. In his answers, Applicant provided documentation showing that he paid and resolved eight debts, totaling \$4,278 and that he negotiated a payment plan for two other debts, totaling \$1,952.¹⁸

¹²GE 2 - GE 5, p. 2; AE D; AE AA; Tr. 42.

¹³GE 2; GE 3; AE E; AE N; Tr. 43-44.

¹⁴GE 2; AE F; AE N; AE P; Tr. 44-45.

¹⁵GE 4; GE 5; AE G; AE N; AE Q; Tr. 45-46.

¹⁶AE H; AE N; AE R; Tr.46-47.

¹⁷AE N; Tr. 59.

¹⁸GE 2.

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 par amount 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 significant financial problems during his marriage, as he provided the sole support for his family of five. His wife did not work and contributed to the financial problems. Most of the debts have not been paid. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's employer reduced his work hours for a significant period of time in 2008, which impacted his monthly income, his payments on his health benefits, and his ability to pay his bills. In 2013, his employer again reduced his work hours. Although his work hours returned to normal by September 2013, his employer furloughed him in

October 2013 when the federal government employees were furloughed. Both events impacted his income and his ability to pay his bills. Applicant is in the process of a divorce and has heavy child support and spousal support responsibilities, which also impacted his income and ability to pay his debts. Applicant acted responsibly under the circumstances because he contacted his creditors and began to resolve his debts, eight of which he resolved before the issuance of the SOR. AG ¶ 26(b) applies.

Although he did not receive financial counseling, Applicant contacted a financial services company that provided him with some information. Applicant used this information to develop a budget. He developed a payment plan to resolve his remaining unpaid debts after contacting his creditors. Applicant paid two SOR debts (¶¶ 1.a and 1.d), has been making payments on four SOR debts (¶¶ 1.c, 1.f, 1.g, and 1.h), and paid 10 non-SOR debts. His actions were done in good faith. His actions resulted in the resolution of 12 debts over the last two years. He will pay his smaller debts first, then he will work to resolve his larger debts, specifically the last two SOR debts. AG ¶¶ 26(c) and 26(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 arose in his marriage when his wife refused to work to help with family finances. His works hours were reduced twice, and he was furloughed once. These events contributed to his inability to pay his bills. He and his wife are now in the process of a divorce. His \$1,800 in child and spousal support pays the rent on the family home and much of the utility bills. He makes sure that he is providing 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).) Applicant has shown a meaningful track record for resolution of his debt. Prior to the issuance of the SOR, he paid and resolved 10 debts, and he has resolved two more debts since the issuance of the SOR. He has an established payment plan for four SOR debts, and he will add the last two SOR debts as other debts are paid. He has the financial ability to comply with the terms of his payment plan. He obtained a second job to increase his income and speed up the repayment of his remaining debts. He has not ignored his debts; rather, he has a plan to resolve his debts. 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 some debts remain unpaid, they are insufficient to raise security concerns. (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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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.

MARY E. HENRY
Administrative Judge