



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



In the matter of:)	
)	
)	ISCR Case No. 12-07487
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

11/14/2013

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 January 3, 2011. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 30, 2013, 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 18, 2013. He submitted a notarized, written response to the SOR allegations dated August 26, 2013. 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 September 13, 2013. Applicant received the FORM on September 19, 2013. 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. DOHA assigned this case to me on November 6, 2013. 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 and admitted as Item 3, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.c of the SOR. His admission is incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.a and 1.b 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 32 years old, works for a DOD contractor. He began his current employment in June 2012. He took a \$22,000 reduction in pay when he accepted this position. Previously, from 2008 until 2011, Applicant worked as a project manager for a DOD contractor until this employer laid him off in 2011. In August 2011, he started temporary employment, which continued until sometime in 2012. The exact dates of his employment are unknown. In addition to his full-time job, Applicant began working a second job in May 2013.²

Applicant graduated from high school in 1999. He enlisted in the United States Air Force in June 1999 and received an honorable discharge in October 2008. He achieved the rank of staff sergeant. While in the Air Force, Applicant took some college courses, but he did not complete a degree or certification program.³

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 5; Item 6; Item 9.

³Item 5; Item 6 - Personal Subject Interview.

Applicant and his wife married in August 2003. They have a nine-year-old son. He parents his wife's 13-year-old son from an earlier relationship. Applicant has a 12-year-old daughter from a prior relationship. His daughter does not live with him, but he pays child support through payroll deductions.⁴

In November 2007, Applicant and his wife purchased a house for approximately \$337,000. At the time he purchased this house, Applicant was serving on active duty. He also worked part-time as an event monitor technician on the Air Force base for a private company. In January 2008, Applicant ceased his part-time employment because of the commute. By 2009, he experienced problems paying his mortgage and his truck payment, in part because his wife had been laid off or lost her job three times, for a total unemployment of 10 to 12 months, while he only worked one job. He attempted to modify his mortgage four times. During each attempt to modify his mortgage, he did not make his mortgage payment for at least two months. He was unsuccessful in obtaining a mortgage loan modification, and he was unable to catch up on his payments. His mortgage company foreclosed on his property in July 2010 (SOR ¶ 1.c). Applicant states that he does not owe any money on his mortgage. The April 17, 2013 credit report indicates that his mortgage account has a zero balance.⁵

Applicant purchased a used truck in 2007. Applicant experienced problems complying with the terms of his loan agreement after he purchased his house and stopped working his part-time job. The note holder repossessed his truck and filed a court action. The note holder obtained a judgment against Applicant in September 2011 in the amount of \$15,882 (SOR ¶ 1.a). The note holder applied for and received an order of garnishment. The note holder began garnishing Applicant's pay in April 2013. As of August 15, 2013, Applicant's pay had been garnished in the amount of \$2,343, which has been applied towards this judgment. The amount paid through garnishment varies each paycheck because the amount paid in garnishment is dependent upon his income each paycheck.⁶

Concerning the remaining \$641 debt (SOR ¶ 1.b), Applicant advises that he negotiated a settlement and paid the bill. He did not provide proof of his payment although his budget reflects payments to this creditor as part of his budget. Applicant's answers to financial interrogatories and the January 2011 and April 2013 credit reports reflect that Applicant incurred other debts, which he has paid. The credit reports also show many debts, which have been timely paid.⁷

Applicant earns \$5,280 a month in gross income from his first job and \$5,250 a month in gross income from his second job for a total gross monthly income of \$10,530.

⁴*Id.*

⁵Item 6 - Item 8.

⁶Item 3; Item 6; Item 7.

⁷Item 6; Item 7.

In the past, he earned overtime pay from his first job. His net monthly income from both jobs, without overtime and after taxes medical, child support, and garnishment deductions, totals \$6,682. His monthly expenses total \$2,846, leaving approximately \$3,836. Applicant has sufficient income to resolve the judgment and small debt noted in SOR ¶ 1.b, if it is not resolved.⁸

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

⁸Item 3; Item 6.

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 after he and his wife purchased a home, he stopped working his part-time job, and his wife lost her jobs. The record reflects a history of unpaid debts. 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 financial problems began after the purchase of his house and his decision to stop working a second job. His ability to take control of his debts was slowed by his wife's loss of income in 2009, his job losses in 2011 and 2012, and his \$22,000 reduction in income in 2012. While stopping his part-time was a choice, the periods of unemployment for he and his wife, and his decline in income are conditions beyond his control. He attempted to modify his mortgage, which is a reasonable action. After four attempts to modify his mortgage, which necessitated the nonpayment of his mortgage for approval, Applicant was unable to catch up his mortgage payment, and the mortgage lender foreclosed on his property. The 2013 credit report shows that Applicant does not owe any additional money on his mortgage. This debt is resolved.

The \$15,000 judgment is being resolved through garnishment. To facilitate resolution of his debts, Applicant has taken a second job, which substantially increased his household income. The record evidence also indicates that he took steps to resolve his smaller debts and that his finances are under control. He has sufficient income to pay his monthly living expenses and to resolve his remaining debts. AG ¶¶ 20(b) and 20(c) 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 first began after he and his wife purchased a home, and he stopped working his part-time job. His wife was laid off or lost three jobs during their period of financial distress. Slowly, Applicant paid his smaller bills. Because he was unable to modify his mortgage, he could not make his payments as well as catch up his past payments. He recently obtained a second job, which takes him away from his family, but allows him to pay his remaining debts. His mortgage debt is resolved, and he is resolving the remaining debts. He took responsibility for supporting his stepson, and he provides child support for his daughter. His actions show that he is a responsible person and that he will fully resolve his remaining debts as he has a track record for resolving unpaid debts. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) 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

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