



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



In the matter of:)	
)	
)	ISCR Case No. 12-07941
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

04/03/2015

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 March 16, 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 12, 2014, and he answered it. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 23, 2015, and I received the case assignment on January 27, 2015. DOHA issued a Notice of Hearing on January 27, 2015, and I convened the hearing as scheduled on February 11, 2015. Department Counsel prepared a chart as a supplement to his case, which is marked as hearing exhibit (HE) 1, but is not accepted as a formal hearing exhibit in the record. Applicant did not object. In its case in chief, the Government offered exhibits (GE) marked as GE 1 through GE 8, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE D, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 20, 2015. I held the record open until February 27, 2015, for Applicant to submit additional matters. Applicant timely submitted AE E - AE Q, which were received and admitted without objection. The record closed on February 27, 2015.

Procedural and Evidentiary Rulings

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. 11.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶ 1.h of the SOR. His admission is incorporated herein as a finding of fact. He denied the factual allegations in ¶¶ 1.a - 1.g 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 64 years old, works as an independent truck driver for a DOD contractor. He has worked for this contractor since 2002 and as a truck driver for many years. He has held a security clearance since 2001 without any evidence of violations of his responsibilities for handling classified materials. He has not been disciplined by his

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).

employer. Applicant served in the United States Marines for six years, including in Vietnam. He received an honorable discharge.²

Applicant graduated from high school in 1970. He married in 1982 and divorced in 1993. He and his wife did not have children. Applicant and his former wife continue to live together in a shared house and work together as truck drivers.³ When driving a load for DOD, two drivers are required in the truck cab at all times. They have worked together for sometime.⁴

In late 2006 or early 2007, Applicant's wife fell at home, breaking her leg. She was unable to work for three to four months. Because she could not work, he could not drive for DOD. He remained at home caring for her. He did not earn any income during this time. He missed payments on all of his bills, creating serious financial difficulties for him with his mortgage, credit cards, and taxes. They returned to work in 2007, but their income was reduced by fewer driving assignments.⁵

Not only was Applicant unable to pay his monthly expenses in early 2007, he incurred approximately \$17,000 in medical expenses for his wife's injury. As a self-employed individual, he did not have health insurance because it was too expensive. His wife did not receive worker's compensation for her injury sustained at home.⁶

Applicant began the slow process of rehabilitating his finances. The credit reports reflect that Applicant paid two past-due, charged-off credit accounts. In his response to the SOR, Applicant provided documentation, showing that he paid a third past-due credit card by 2014. In 2012, he applied to his mortgage company for a modification of his home mortgage. His request was granted in November 2012. The mortgage lender reduced his interest rate from 8% to 3.5%. He is current on his mortgage payments. He also paid all the medical bills incurred by his wife in 2007. While he did not provide copies of the medical bills, the credit reports of record do not show any past-due medical bills. Finally, Applicant resolved the charged-off credit debt of \$1,980 alleged in SOR ¶ 1.c.⁷

In addition to the above resolved debts, Applicant incurred tax debts with the state and federal governments. The state obtained a judgment for \$7,633 in 2011.

²GE 1; GE 2; Tr. 25, 49-50, 57.

³Throughout the hearing, Applicant continued to refer to his former wife as his wife. She will also be reference as his wife in this decision.

⁴GE 1; GE 2; Tr. 25-26, 29.

⁵Response to SOR; GE 4; Tr. 26-27.

⁶GE 4; Tr. 27.

⁷Attachment to Response to SOR; GE 4 - GE 8; Tr. 27, 48-49.

Applicant began payments on this judgment in October 2011 at the rate of \$530 a month. He has paid the judgment in full. The January 15, 2014 credit bureau report reflects that the judgment has been satisfied. This debt is not alleged on the SOR. Applicant verified that he filed his state income tax returns from 2005 through 2012.⁸

Applicant developed problems with unpaid federal income and self-employment (social security taxes) taxes, starting with the 2006 tax year. With the loss of income in early 2007, Applicant did not have money to pay the taxes due for the 2006 tax year. In April 2009,⁹ he retained the services of Company A to help resolve his tax issues with the Internal Revenue Service (IRS). He paid this company \$3,800 in 2009 and another \$3,000 at a later time to resolve his tax issues. Company A filed his tax returns for the tax years 2008 through 2011. By 2012, Applicant realized that the work performed by Company A was incorrect. He spoke with the IRS. He also hired Company B, a national tax preparer, to review the tax returns filed by Company A. Company B filed amendments to his tax returns for the tax years 2007, 2008, 2009, 2010, and 2011. In October 2013, Applicant hired a taxpayer advocate service to help resolve his tax issues with the IRS.¹⁰

SOR ¶ 1.h alleges that Applicant owes \$11,280 in taxes for the 2006 tax year. Applicant has not and does not dispute this tax debt. The IRS tax transcripts for this tax year reflect that the tax return was filed on November 5, 2007, that various payments were made over the years; that an offer in compromise was denied; and that the current account balance is \$11,479. In November 2014, the IRS approved Applicant's proposed repayment plan. This tax debt is included in the repayment plan.¹¹

SOR ¶ 1.g alleges that Applicant owes \$26,703 for the 2007 tax year. The IRS tax transcripts reflect that the IRS granted Applicant's request for an extension of time to file this tax return and that he filed the return on February 8, 2010. The IRS filed a tax lien for \$26,703 on February 26, 2010. The tax transcripts also show that the IRS rejected Applicant's offer in compromise in January 2012 and that Applicant filed an amended tax return in March 2012 and June 2012. Applicant requested an audit of this tax return twice, once with the assistance of his taxpayer advocate. After the tax audits, the IRS concluded that his tax debt for the 2007 tax year had been resolved and released its lien on October 15, 2014. This debt is resolved.¹²

Concerning the 2008 tax year, the IRS tax transcripts reflect that Applicant filed the tax return on December 21, 2009; that the IRS filed a tax lien for \$6,352 on January

⁸GE 4 - GE 6; Tr. 56.

⁹Applicant thought he retained Company A in 2007, but his documentation shows a later date. Tr. 34-35.

¹⁰GE 4 - GE 8; AE C; AE P; Tr. 32, 34-37, 39-42.

¹¹GE 4; AE B; AE C; AE M; AE O.

¹²GE 4; AE B; AE C; AE K; AE L; Tr. 63.

13, 2010; that the IRS denied his offer in compromise in January 2012; that an amended tax return was filed on June 3, 2011; and that he had a zero balance on his account. The IRS released the tax lien on January 24, 2014. This tax debt is resolved.¹³

SOR ¶ 1.f alleges that Applicant owes \$64,219 for the 2009 tax year. The first IRS tax transcript reflects that Applicant filed his return on December 20, 2010 and that he owed \$64,219 in income and self-employment taxes. The IRS denied his offer in compromise in January 2012. Applicant requested an audit of this tax return twice, once with the assistance of his taxpayer advocate. After the tax audits, the IRS concluded that his tax debt for the 2009 tax year \$14,673, which is now \$14,780, as shown by the second tax transcript. In November 2014, the IRS approved Applicant's proposed repayment plan. This tax debt is included in the repayment plan.¹⁴

SOR ¶ 1.e alleges that Applicant owes \$72,480 for the 2010 tax year. The first IRS tax transcript reflects that Applicant filed his return on June 6, 2011 and that he owed \$72,480 in income and self-employment taxes. The IRS denied his offer in compromise in January 2012. Applicant requested an audit of this tax return twice, once with the assistance of his taxpayer advocate. After the tax audits, the IRS concluded that his tax debt for the 2010 tax year was \$13,725, which is now \$13,912, as shown in the second tax transcript. In November 2014, the IRS approved Applicant's proposed repayment plan. This tax debt is included in the repayment plan.¹⁵

SOR ¶ 1.d alleges that Applicant owes \$60,319 for the 2011 tax year. The first IRS tax transcript reflects that Applicant filed his return on April 23, 2012 and that he owed \$60,320 in income and self-employment taxes. Applicant requested an audit of this tax return twice, once with the assistance of his taxpayer advocate. After the tax audits, the IRS concluded that his tax debt for the 2011 tax year was \$11,064, which is now \$11,220, as shown in the second tax transcript. In November 2014, the IRS approved Applicant's proposed repayment plan. This tax debt is included in the repayment plan.¹⁶

Through his taxpayer advocate, Applicant and the IRS reached an agreement on the taxes owed for the above years as well as the 2013 tax year. He developed a repayment plan, which the IRS accepted in November 2014. Applicant agreed to pay \$690 a month on his debt until it is paid. The IRS will automatically withdraw his payment from his bank account on the 15th of each month. Applicant established a

¹³GE 4; AE C; AE I; AE J; Tr. 37.

¹⁴GE 4; AE B; AE C; AE H; Tr. 36.

¹⁵GE 4; AE B; AE C; AE G.

¹⁶GE 4; AE B; AE C; AE F.

checking account specifically for the payment of this debt. The slight increase in the amount owed is most likely the result of accrued interest.¹⁷

SOR ¶¶ 1.a and 1.b allege that the federal government filed tax liens against the Applicant in 2010 for \$21,465 and in 2007 for \$16,951. The 2010 tax lien relates to his 2008 taxes, which are resolved. The IRS released this lien. Applicant has no information about the 2007 federal tax lien. The November 2014 letter from the IRS does not mention this lien and does not indicate that Applicant owes any other federal taxes prior to 2006 and discussed in this decision. Based on this IRS letter, the lien is not related to other tax years and is considered as part of the payment plan.¹⁸

Applicant's monthly income varies, depending upon his work levels. He is current on his mortgage payment and his payment on his pick up truck. He has paid the loan on his large truck and does not have any other debts. Applicant opened a checking account solely for payment of his IRS tax debt, a savings account solely for payment of his mortgage, and a second checking account for other funds and payments. He plans to sell some equipment from his business to help pay his federal tax debt.¹⁹

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.

¹⁷AE B; AE C; Tr. 53-55, 60.

¹⁸GE 5 - GE 7; AE B; AE C.

¹⁹AE A; AE D; Tr. 53-55, 73.

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;
- (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 his wife broke her leg, and they were unable to work. He was unable to pay his bills, including taxes for a time. 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 in early 2007 when his wife broke her leg and could not work with him as the second driver required by the DOD when hauling material. He was not able to work and stayed home to care for her. This was a situation beyond his control. When they returned to work, their work load was lower, a factor beyond his control. Applicant hired Company A to resolve his tax issues with the IRS and to file his tax returns. The erroneous tax filings by Company A created additional tax issues for Applicant, a factor beyond his control. By 2009, the IRS began to review Applicant's tax filings and ultimately audited his tax returns twice. In 2012, he hired Company B to review the tax filings of Company A and file amended tax returns. For almost six years, Applicant has worked to resolve his tax issues with the assistance of tax professionals, some better qualified than others. During this same time, he worked steadily to pay his other past-due debts and to pay the state tax judgment against him. He sought and received a modification on his mortgage. He has not ignored his tax issues, but worked to resolve them. AG ¶¶ 20(b) applies.

The record lacks any evidence of financial counseling for Applicant. In the instant case, Applicant met his legal obligation to file his tax returns, although somewhat late some years, but before any tax liens were filed by the IRS. When he filed his 2006 tax return, he owed additional taxes, but he did not immediately pay all the taxes owed. He did make periodic payments on these taxes. Applicant initiated action at least as early as April 2009 to resolve his accumulating federal tax debt problems. Following two IRS tax audits, Applicant and the IRS agreed to the amount of taxes owed and to a reasonable payment plan. Applicant began his payments in December 2014. The IRS released two liens filed against Applicant after he filed his tax returns. The IRS has not

garnished Applicant's earnings. Applicant made a good faith effort to resolve all his other financial problems during this same time period.²⁰ 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):

²⁰Recently, the Appeal Board, in ISCR No. 12-05043 (App. Bd. Oct. 30, 2014), issued a decision denying an Applicant's security clearance after the Applicant repaid the IRS more than \$100,000 through a wage garnishment for taxes owed over a period of 10 years. In that case, the Appeal Board stated that "a person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." The Appeal Board noted that a person who has a history of failing to file [emphasis supplied] income tax returns does not demonstrate a high degree of judgment and reliability required for access to classified information, citing ISCR Case No. 98-0608 (App. Bd. Jun. 27, 2000). The Appeal Board appears to have been troubled because the Applicant in that case did not file his tax returns and took no action to pay his taxes until his wages were garnished. According to the Appeal Board, the failure to file taxes or to pay overdue taxes until garnishment action is taken significantly undercuts the strength of the Applicant's filing of his tax returns three years before his hearing. Two key factors emphasized by the Appeal Board, failure to file tax returns and garnishment, are not present in this Applicant's case.

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 lost control of his finances when his wife fell and broke her leg in late 2006 or early 2007. Because of the requirement for two drivers in a truck hauling classified material, Applicant was unable to work. When he and his wife returned to work, their work trips were fewer than earlier. Over time, Applicant slowly took steps to resolve his unpaid debts, including his taxes. He did not ignore his debts. Recognizing that he needed help with his taxes, he hired Company A. Instead of helping him, Company A created larger tax issues for him. Three years of tax returns filed by this company showed a federal tax debt of nearly \$200,000. He eventually hired Company B to review the tax returns filed by Company A. At the same time, the IRS began the first audit of his tax returns. He eventually hired a tax advocate to work on his behalf with the IRS because his tax debt was excessive. The tax advocate persuaded the IRS to conduct a second audit of his taxes, which resulted in a significant reduction of the amount of taxes he owed and a payment plan to resolve his remaining tax debts.

The evidence of record reflects that Applicant has a track record for debt resolution. He resolved many debts prior to the issuance of the SOR, including his state tax debt. He negotiated a modification of his mortgage loan through a reduction in the interest rate on his loan. He spent seven years working out his debt issues and finally has an agreement with the IRS to pay his remaining taxes. Based on the evidence in

the record and his testimony, there is little likelihood that Applicant can be pressured or coerced into revealing classified information because of his financial problems. With his established track record for debt payment, he will continue to comply with his IRS payment agreement.

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.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