



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



In the matter of:)	
)	
)	ISCR Case No. 12-10324
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

12/10/2015

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 April 26, 2012. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on June 5, 2015, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on June 18, 2015, and he answered it on July 11, 2015. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 30, 2015, and I received the case assignment on October 1, 2015. DOHA issued a Notice of Hearing on October 6, 2015, and I convened the hearing as scheduled on October 22, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A through AE C, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 3, 2015. I held the record open until November 12, 2015, for Applicant to submit additional matters. Applicant requested additional time and was given until November 23, 2015 to submit the requested information by order dated November 18, 2015. He timely submitted AE D - AE Q, which were received and admitted without objection. The record closed on November 23, 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. 9.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.f of the SOR. His admissions are incorporated herein as findings of fact. He was unable to locate any information about the debts listed in the factual allegations in ¶¶ 1.g - 1.i of the SOR. His answers are deemed a denial of the factual allegations.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 50 years old, works as a material specialist for DOD contractor. He has worked for his employer since October 2000. As a member of a work team, he received an award in 2014 and in 2015 for outstanding performance. His director wrote

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).

a thank you letter to him for his support of his team. He has not been disciplined or suspended at work.²

Applicant graduated from high school. He has taken classes at a community college, but he has not received a degree or program certificate. He and his wife married in February 2011. They have a 15-year-old son. He has a step-daughter and two stepsons, all of whom live independently. His wife does not work. She is a diabetic.³

In 2007, Applicant and his coworkers engaged in a labor strike, which lasted three months. During the strike, his 1998 car was repossessed when he could not make the monthly payment. Three or four years ago, physicians diagnosed Applicant with Hodgkin's lymphoma. He underwent radiation treatments and other medical care for his disease. He incurred nearly \$5,000 of medical bills that his health insurance did not pay.⁴

Applicant's wife managed the household finances. She did not pay all their bills. She also obtained two credit cards in 2005 without his knowledge and used them. She fell behind in the payments. Around 2008, the creditor garnished his wages to pay the debts, which totaled approximately \$2,000. After he paid the debts, he closed the accounts. Applicant does not have any credit cards.⁵

Applicant currently earns \$3,416 a month in gross income, and he receives \$2,484 a month in net pay. His earnings statements for September 2015 and October 2015 reflect that he occasionally works overtime or double time. In August 2015, he worked six hours of overtime and six hours of double time for additional net income of \$420. In September 2015, and for the pay period ending October 9, 2015, he worked five hours of double time for an additional income \$122 in October 2015. His wife earns about \$35 a month from some work she does. His total net monthly income is \$2,519. His monthly expenses include \$565 for his mortgage, \$109 for the second mortgage, \$33 for home repairs, \$171 for electric and gas, \$100 for water, \$49 for phones, \$155 for cable and internet, \$66 for car insurance, \$100 for gasoline, \$58 for car maintenance, \$500 for food and lunches, \$55 barber shop, \$200 for son's school band, and \$40 for pet care. His monthly expenses total approximately \$2,100. His budget listed nearly \$300 for dry cleaning and laundry, which appears to be erroneous and such an expense does not show up on his monthly bank account. Home repairs and car repairs are not always incurred every month. His earnings statement indicate that \$192

²GE 1; AE Q; Tr. 17.

³GE 1; Tr. 17-18, 33.

⁴Tr. 24, 32, 34.

⁵GE 2, p. 4; Tr. 35-36.

a month is deducted from his income for two loan payments. Applicant has approximately \$400 a month remaining income to pay other expenses.⁶

The SOR identified nine purportedly continuing delinquencies as reflected by credit reports from 2012, 2014, and 2015 totaling approximately \$38,609. SOR allegation 1.a for \$17,498 is the largest debt, and it relates to the second mortgage on his home. Applicant advised that he fell behind in this mortgage payment. He negotiated a monthly payment of \$109, which began in July 2015. He has timely made his payment each month.⁷

SOR allegation 1.b (\$4,953) concerns medical bills not paid by Applicant's insurance carrier for his cancer treatment. Applicant contacted the creditor and negotiated a payment plan. He agreed to pay \$103 a month on this debt, and he began making his payments on July 15, 2015. The documentation shows a second creditor seeking payment for the same medical office as of November 2015. There is no evidence that this debt was sold and Applicant does not indicate an awareness that the debt has been sold. Applicant complies with the terms of his payment plan.⁸

SOR allegation 1.c concerns a \$674 cell phone account now held by a collection company. Applicant negotiated a payment of \$64 a month. The September 2015 credit report shows a balance of \$488, which indicates payments have been made on the account. Applicant provided a statement from the collection company showing a balance of \$400 and a payment of \$95 on October 29, 2015. With this last payment, the collection company advised that the debt had been settled or closed and no further payments would be taken. Applicant noted that the collection company settled the debt.⁹

SOR allegations 1.d (\$368), 1.e (\$90), and 1.f (\$33) relate to medical bills. Applicant settled and paid the \$90 medical bill on July 10, 2015. The September 2015 credit report indicates that he paid the \$33 medical bill and that as of that date, the balance on the \$368 debt was \$148. Applicant is paying \$50 a month on this bill with a payment made on October 20, 2015, leaving a balance of \$98. Applicant provided documentation showing that he paid a \$122 medical bill in full as of October 29, 2015. This bill is not listed on the SOR. The September 2015 credit report identifies another unpaid medical bill for \$385. Applicant was unaware of this debt until the hearing.¹⁰

Applicant's wife attended college for training in the medical profession. She obtained student loans to pay for her education. These loans are the source of the

⁶AE D; AE O; AE P.

⁷AE B; AE L; Tr. 23-24.

⁸GE 2; GE E; AE A; AE E; AE F; AE P; Tr. 24-25.

⁹GE 4; AE I; AE P; Tr. 25, 27-28.

¹⁰GE 4; AE C; AE G; AE J; AE P; Tr. 25-27, 42.

\$11,173 education debt in SOR allegation 1.g. According to the May 2012 credit report, the original creditor for this debt filed a claim with the Government for payment and closed its account. The Department of Education now holds this debt. The account has been placed in forbearance until May 24, 2016. His wife stated that she plans to start working before May 2016 to pay the debt. At this time, the debt is in good standing.¹¹

In his response to the SOR, Applicant indicated that he contacted the creditor identified in SOR allegation 1.h (\$356). The creditor advised that it did not have an account in his name. This debt is not listed on the October 2014 and the September 2015 credit reports. The last SOR debt (1.i - \$3,464) concerns a car repossession. Applicant acknowledged that his car was repossessed because he was unable to make the monthly payment while he was on strike in late 2006 and early 2007. The May 2012 credit report indicates that the debt is a repossession and that there may be a balance due. Given the age of the debt, it is no longer listed on the October 2014 and the September 2015 credit reports.¹²

Appellant files his federal and state tax returns each year. Any refund he receives from the state is applied to a state debt incurred by his stepson as a juvenile. He advised at the hearing that he owes \$1,000 in taxes. It is unclear if he owes this amount to the federal government or the state government.¹³

Applicant provided copies of his electric and water bills. He has a balance on both bills, but he makes a reasonable payment each month on these bills. His mortgage account statement indicates that he has an additional outstanding balance of almost \$400. Applicant called this amount a bid fee. He pays his mortgage each month, but he has not paid the fee. The record lacks evidence that he has had financial counseling.¹⁴

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 ¶

¹¹GE 2, p. 3; GE 3, p.2; AE H; Tr. 27-28, 37.

¹²Response to SOR; GE 2 - GE 4; Tr. 29-30,

¹³Tr. 46-49.

¹⁴AE K; AE M ; AE N; Tr. 42.

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 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 following a strike at work and because his insurance carrier did not pay all the medical bills for his cancer treatment. Most of the debts had not been resolved when the SOR was issued. 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 lost three to four months of work and income from late 2006 into early 2007 because of a strike at his place of employment. The strike reduced his monthly income, making it difficult for him to pay all his monthly expenses. He stopped paying for his car, and it was repossessed. Several years later, he underwent radiation treatments for Hodgkin's lymphoma. His medical insurance company did not pay all the costs related to his treatments. These events are circumstances beyond his control. Because he did not act sooner to resolve these debts, AG ¶ 20(b) is only partially applicable.

Applicant did not present evidence of financial counseling; however, he has taken steps to resolve his past-due debts and to manage his finances. He has paid or is paying several of the SOR debts, particularly the larger debts. He has taken control of his finances and is working towards the resolution of his debts. AG ¶ 20(c) applies.

Applicant began contacting his creditors in the early summer of 2015. He negotiated payment plans with six creditors and paid his smallest bill. As a result of his

actions, three smaller debts are paid, and monthly payments on three other debts are ongoing. His actions reflect a good-faith effort¹⁵ to resolve his debts. AG ¶ 20(d) applies.

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.

¹⁵The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigation condition].

(Internal citation and footnote omitted) ISCR Case No.02-30304 at 3 (App. Bd. Apr.20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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 failed to quickly resolve his debts when they began to develop in 2007 or after his later cancer treatments, which created a concern for the Government. Sometime before the SOR was issued, two non-SOR debts were resolved through garnishment, which reduced his available income to pay his remaining debts. Since receiving the SOR, he has worked to resolve his overdue debts. He paid three small debts and is paying on the remaining three debts, one of which should be resolved shortly. His largest debt relates to a second mortgage. He is paying this debt and will be doing so over a long period of time.

Applicant is not required to be debt free to hold a security clearance. However, he must manage his income and expenses. While he has not fully paid his utility bills, he is paying monthly on the bills, which makes the bills current. Again, he is not required to pay the bill in full each month to hold a security clearance. His wife is planning on returning to work, and if she does, her income can help with resolving their debts more quickly. In reviewing and weighing all the evidence of record, I find that Applicant has taken control of his finances; he has shown a track record for debt resolution; and he is working to resolve his unpaid debts, which cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid: it is whether his financial

circumstances raise concerns about his fitness to hold a position of trust. 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
Subparagraph 1.i:	For Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge