



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



In the matter of:)	
)	
)	ISCR Case No. 13-00703
)	
Applicant for Security Clearance)	

Appearances

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

03/20/2014

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 June 18, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 16, 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 submitted a notarized, written response to the SOR allegations dated November 14, 2014, and 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 December 12, 2013. Applicant received the FORM on December 30, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated March 4, 2014. DOHA assigned this case to me on March 14, 2014. The Government submitted seven exhibits, which have been marked as Items 1-7 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. His written response to the FORM is admitted into the record as Applicant Exhibits (AE) A - E.

Findings of Fact

In his Answer to the SOR, Applicant admitted, with explanation, the factual allegations in ¶¶ 1.a -1.f and 1.h -1.l of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegation in ¶ 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 44 years old, works as a material specialist for a DOD contractor. He began his current employment 10 years ago. He has not been disciplined at work.²

Applicant served on active duty in the United States Navy from August 1989 until December 1996, when he received an honorable discharge. Applicant and his wife married in October 2000. They have 12-year-old twins.³

The SOR identified 11 purportedly continuing delinquencies as reflected by credit reports from 2009, 2010, and 2013, totaling approximately \$16,726. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in the credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under

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 4.

³Item 4.

a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

After reviewing the credit reports (CR) dated September 17, 2009, March 11, 2011, June 21, 2013, and the SOR, I have compiled a list of 11 debts allegedly owed, and the current status of each. Appellant's debts are as follows:⁴

SOR ¶	CREDITOR	AMOUNT	STATUS	EVIDENCE
1.b	Phone	\$ 841.00	Paying; balance \$586	Item 3; AE D
1.c	Credit card	\$ 684.00	Paying; balance \$244	Item 3; AE D
1.d	Credit Union	\$ 246.00	Paid October 2013	Item 3; AE D
1.e	Cell Phone	\$ 821.00	Paying; balance \$412	Item 3; AE D
1.f	Bank	\$ 454.00	Paying; balance \$254	Item 3; AE D
1.g	Collection	\$ 5,208.00	Disputing; paying; balance \$5,050	Item 3; AE D
1.h	Credit Union	\$ 1,091.00	Paying; balance \$761	Item 3; AE D
1.i	Banking	\$ 117.00	Paid September 2013	Item 3; AE D
1.j	Collection	\$ 289.00	Paid August 2010	Item 3; AE D
1.k`	Collection	\$ 450.00	Paying; balance \$225	Item 3; AE D
1.l	Education loans	\$ 6,732.00	Current; deferred; balance \$6,600	Item 3; AE D

Applicant relates six of his SOR debts to fraud by a family member. The family member used his name to open accounts and did not pay the debts. Applicant has accepted responsibility for the debts and is paying the debts under a payment plan. He acknowledged all but one of the remaining SOR debts. He included the acknowledged

⁴Items 6 and 7.

debts in his payment plan. His 2009 and 2013 credit reports have a security alert statement.⁵

Applicant retained the services of a debt resolution company on March 3, 2013. He agreed to an initial payment of \$195 followed by weekly payments of \$45 for approximately 6 years. He provided a spreadsheet prepared by this company in February 2014. The spreadsheet lists all his SOR debts and shows the current balance on each debt. He paid two debts in full, with one debt paid in 2010, and has paid approximately \$2,000 on his other debts. On July 30, 2013, Applicant signed another agreement with a credit monitoring company, agreeing to pay monthly service fee of \$99 to have his credit monitored. The February 2014 monitoring report did not indicate any changes in his credit report.⁶

SOR allegation 1.i identifies Applicant's deferred education loans as a security concern. Because these loans are deferred, the credit reports list the status of payment "as agreed". Despite the deferred status of his education loans, Applicant included the education loans in his payment plan and is paying month on these debts. Applicant denied the \$5,200 debt in SOR allegation 1.g. While he does not know the source of this debt and he is disputing it, he is also paying on the debt while he tries to negotiate a resolution of it.⁷

Applicant did not provide a budget or copies of his earnings statements. I am unable to calculate his income and expenses. He acknowledged filing a Chapter 13 bankruptcy petition in 2006 on the recommendation of an attorney without expertise in bankruptcy law. He also stopped paying his debts and eventually dismissed his bankruptcy case on the advice of the attorney.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 ¶¶

⁵Item 3.

⁶AE A - AE E.

⁷Item 1; Items 5-7; AE D.

⁸Items 1 and 3.

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 after filing a Chapter 13 bankruptcy petition in 2006. Most of the debts have not been resolved. 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.

Some of Applicant's financial problems arose because a family member fraudulently used his name and personal information to open six accounts in Applicant's name. This is a factor beyond his control. Four other debts became delinquent when he filed for bankruptcy, and upon the advice of his attorney, he stopped making his monthly payments. He later learned that the attorney gave him incorrect advice. This is also a factor beyond his control. Applicant has established a payment plan for his debts and is slowly paying his past-due debts. Thus, he has acted reasonably. AG ¶ 20(b) applies.

Applicant retained a debt resolution company one year ago, and nine months ago he retained the services of a credit monitoring company to keep watch on his credit reports for unusual activities. In the last year, he has resolved two small debts and paid monthly on his remaining debts, including the debt he disputes. His past debts are under control; he has not incurred new debts; and no new fraudulent accounts have occurred. AG ¶ 20(c) applies

Applicant's evidence reflects that through the debt resolution company, he is paying his debts regularly after the company contacted the creditors. While he has not personally contacted his creditors, the debt resolution company has done so on his behalf. Applicant's decision to retain to a debt resolution company to help him resolve

his debts, the contacts made by this company to his creditors, and his compliance with a payment plan reflect a good-faith effort by Applicant to resolve his past-due 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.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and

his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began at least as early as 2006. Upon the advice of an attorney, Applicant filed a Chapter 13 bankruptcy petition, stopped payments on his credit cards, and then dismissed the bankruptcy petition. Instead of resolving his financial problems, these actions created financial problems for him. Applicant's financial problems were exacerbated when a family member used his name and personal information to open accounts in Applicant's name, which were not paid. To his credit, Applicant has accepted responsibility for these accounts and has begun paying the debts.

Applicant has developed a payment plan for his past-due debts and with the assistance of a debt resolution company, he is paying these debts. He has established a track record over the last year for payment of his debts. His education loans are being paid through the debt resolution company, even though the loans were not in default. Applicant is not required to be debt free to hold a security clearance. He is required to pay his bills and manage his income and expenses.

The record evidence reflects most significantly that Applicant has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) Although he disputes the \$5,200 debt because the creditor is unknown to him, he has made small payments on the debt. His past-due debts do not reflect on his judgment and trustworthiness nor can his past-due debts 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 security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) Applicant has shown that his finances and past debts are under control.

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
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	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