



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



In the matter of:)	
)	
)	ISCR Case No. 14-00135
)	
Applicant for Security Clearance)	

Appearances

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

09/12/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on August 21, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 11, 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. He submitted a notarized, written response to the SOR allegations dated May 10, 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 August 5, 2014. Applicant received the FORM on August 14, 2014. 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 August 16, 2014. DOHA assigned this case to me on August 28, 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 as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations of the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 52 years old, applied for a position as a technical writer with a DOD contractor in 2013. Until he receives a security clearance, Applicant is working as a parts consultant in the automotive industry, a position he has held since August 2013.¹

Applicant graduated from high school in 1980. He enlisted in the United States Air Force in October 1980 and served on active duty until November 2000. He received an honorable discharge from the Air Force in November 2000. He receives military retirement benefits. Following his discharge, Applicant worked in the aviation industry and as a warehouse inspector until 2009, except for 19 months of unemployment between October 2004 and May 2006.² He worked overseas as a contractor from November 2009 until April 2010. Since 2010, he has worked in the automotive industry.³

Applicant and his first wife married in February 1984 and divorced September 1999. They had two children, a son who is 29 years old, and a daughter who is 22 years old. He married his second wife in February 2002, and they divorced in July 2013. They have a 12-year-old daughter for whom Applicant provides monthly child support.

¹Item 3; Item 7.

²Applicant stayed at home and cared for his young daughter during this time. His military income provided support for him. Item 7.

³Item 3; Item 7.

The SOR indicates that Applicant filed a Chapter 13 bankruptcy petition on January 7, 2004. The court dismissed his petition on February 27, 2004. Prior to this, Applicant filed a Chapter 7 bankruptcy petition on April 12, 2001. The court discharged his debts on November 1, 2001.⁴

The SOR identifies four judgments totaling \$20,977, eight medical bills totaling \$5,067, and 14 other debts totaling \$5,762 for total unpaid debts of \$31,806. SOR allegations 1.f (\$994) and 1.l (\$995) are the same debt, reducing his unpaid debts to \$30,812. Applicant disputed his medical bills with his insurance carrier, but has not provided documentation of his oral dispute because he has not received documentation from the insurance carrier showing the resolution of his dispute.⁵

Applicant admitted the SOR debts in his response. He attributes the debts to the spending habits of his second wife, financial decisions by his wife while he worked overseas, and the cost of his divorce. He has not provided a budget or his earnings statement from his work and military retirement.⁶

Applicant advised that his father died in February 2013 and that his mother died in January 2013. Under the terms of his mother's will, Applicant is to sell her home and pay her remaining debts. The remaining money from the sale of her house is to be divided among Applicant and his three children. Applicant advised that as of May 2014, he had sold the house and paid his mother's remaining medical bills. He was completing the work towards the resolution of her estate. Applicant has not provided any documentation related to his mother's estate showing what he is to do or the final estate accounting, which shows his actual share.⁷

Applicant indicates that when he receives his share of his mother's estate, he will use the money to pay the SOR debts. He also advises that if this money is insufficient to resolve all his debts, he will pay any remaining debts through payment plans. At this time, his debts remain unpaid. Some debts are no longer on his recent credit reports.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

⁴Item 5; Item 6.

⁵Item 1; Item 4; AE A.

⁶Item 2; Item 7; AE A.

⁷Item 2.

⁸Item 2; Item 7, p. 8.

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 permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems during his second marriage, in part because of his wife's spending habits. 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; and
- (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.

Applicant's debts were discharged in bankruptcy in 2001. Less than three years later, he filed a Chapter 13 bankruptcy, which the court dismissed less than two months later. Since that time, Applicant accumulated more than \$30,000 in past-due debts, which remain unresolved. Applicant's 2013 divorce is a circumstance beyond his control, which may have contributed to his unpaid debts. He has not provided any documentation showing that he has disputed or paid any of the SOR debts, thus he has not shown he acted responsibly.⁹ Although he advises that he will use his inheritance to resolve these debts, he has not shown that he received his inheritance. AG ¶ 20(b) is partially applicable as he has not shown that he has taken any action on his debts. A future promise to pay debt is insufficient to establish that his debts are resolved or under control. AG ¶ 20(c) does not apply.

⁹Disputes made by telephone are insufficient to establish his burden of proof that he disputed debts.

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.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served honorably in the Air Force for 20 years before retiring. In 2004, he stayed home and cared for his young daughter for almost two years. His SOR debts arose from his second marriage and second divorce. He advises that he will resolve his debts after he receives his inheritance and through payments plan for any unpaid debts. His future promise of payment through this plan is not enough. Applicant must show that he has taken control of his debts by making a good-faith effort to pay at least some of his debts and by developing a plan to pay his debts in a systematic manner, which would show a track record of debt resolution. His current income and expenses are unknown, making an evaluation of his ability to pay his past-due debts as well as his current expenses impossible. The record lacks sufficient evidence to establish mitigation at this time.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.aa:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge