



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



In the matter of:)	
)	
)	ISCR Case No. 14-03030
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Department Counsel
For Applicant: *Pro se*

06/17/2015

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 April 5, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on September 15, 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, and he submitted a notarized, written response, with attachments, to the SOR allegations dated October 9, 2014. 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 April 7, 2015, which Applicant received. 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 May 6, 2015. DOHA assigned this case to me on May 26, 2015. 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 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AEs A, A1-A4).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a-1.j and 1.l-1.s of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegation in ¶ 1.k 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 senior budget analyst for a DOD contractor. He began his current employment in September 2004. Applicant has held a security clearance for 21 years. The record lacks any information that reflects a violation of the rules for handling proprietary or classified information. Since there is no negative evidence, Applicant's statement that he had always followed these rules is credible.²

Applicant graduated from high school in 1989. He received a Bachelor of Arts degree in 1993 and a Master of Science degree in 2011. Applicant and his wife married in 2005. He has two sons, ages 20 and 10, and a stepson, age 22. Applicant's wife works as a sales representative.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 4; AE A.

³Item 3; Item 4.

In 2006, Applicant and his wife purchased their first home. They financed the purchase with a first and second mortgage. Applicant advises that they did not understand the impact of the terms of their mortgage loan. Eventually, the monthly mortgage payment became too high to pay. Applicant's home went into foreclosure after he attempted to sell the property through a short-sale. The primary mortgage on his home is not at issue in this case. However, SOR allegation 1.i concerns his second mortgage debt of \$89,918. The April 2013 credit report indicates that the debt is closed with the listed creditor and that the debt has been transferred. Applicant has not provided any information on the status of this debt. Applicant related his financial issues to the mortgage problems on his home. Applicant participated in a class-action lawsuit concerning the mortgages on his home. He received an undisclosed amount of money, which he described as a small amount.⁴

The SOR identifies 16 unpaid debts. The debts in SOR paragraphs 1.a -1.f, 1.l, 1.m, and 1.n became delinquent in 2007. The debt in SOR paragraph 1.o became delinquent in 2009, and Applicant's student loan debt became delinquent in January 2012, after he failed to resume payments when his deferment period ended. Applicant related these debts to the problems which arose when his mortgages became an issue.⁵

The May 2014 credit report indicated that the past-due debts in SOR paragraphs 1.a, 1.b, 1.d-1.f, and 1.o are closed and charged-off accounts. The credit reports also show that SOR allegations 1.c and 1.m are the same debt, as the account numbers are the same and the creditor in SOR allegation 1.c is a collection creditor, not an original creditor. In his response, Applicant advised that either the accounts would be purged from his credit report in October 2014 or that the account does not exist on his three credit reports. Applicant has not provided any documentation that reflects he paid these debts or otherwise resolved these debts himself. None of these accounts are listed on his May 2015 credit report. His May 2015 credit report listed the car repossession in SOR paragraph 1.o (\$15,357) as charged off with a zero balance. Applicant indicated that he did not intend to pay this account. The record lacks any evidence that Applicant took action on this debt or plans to do so in the future.⁶

Applicant provided documentation showing that he paid the debts in SOR paragraphs 1.d (\$523), 1.g (\$148), and 1.l (\$55). The credit reports also reflect that he paid a judgment and fully resolved a state tax lien. The debt in SOR paragraph 1.k concerns a dispute with the cable company about the return of a cable modem box. Applicant indicated that he returned the modem at the same time he returned the other equipment to the cable company. Applicant is not sure how the issue was resolved, but the May 2014 and May 2015 credit reports do not list this debt, which occurred in 2009.⁷

⁴Item 3; Item 4; Item 6; AE A.

⁵Item 3, Item 4; Item 6; AE A.

⁶Item 1; Item 3; Item 6; Item 7; AE A-4.

⁷Item 3; AE A -3.

Applicant obtained a deferment on his student loans during the height of his financial issues. When he moved, he did not provide the creditor with a new address. He did not receive the notices that his payments were to begin. When he learned that he was in default, he contacted the credit collection company and set up a monthly payment plan to rehabilitate his student loan debt. He made 12 payments of \$226 beginning in March 2013. At the end of the year, his student loans were viewed as rehabilitated. He began new monthly payments at \$169 a month on December 16, 2013. He has consistently paid this amount or more since this date. Applicant has resolved his student loan debt issue.⁸

Applicant timely filed his federal income tax return in 2008 and his state income tax return in 2010. His wife works as a commissioned sales representative. Because she works on commission, she is paid varying amounts of money each month. In 2008 and 2010, Applicant retained the services of a professional to prepare their tax returns. For unknown reasons, not all of his wife's income was included on their income tax returns. Applicant advised that the failure to include this money was unintentional. Applicant's 2008 Internal Revenue Service (IRS) tax transcript reflects that he was entitled to refund for the tax year 2008.⁹ In July 2010, the IRS concluded that Applicant owed additional taxes for the 2008 tax year, as well as penalties and late payment charges. The 2008 tax transcript does not indicate that a lien had been filed for this tax year. It does show that Applicant established an installment agreement to pay the debt on December 9, 2014.¹⁰ Applicant began paying the IRS \$347 a month in January 2015. Applicant provided documentation showing that he had made the first three payments. He advised that he continues to make these payments. SOR allegation 1.h raises a concern about an unpaid federal tax lien filed in June 2008. The credit report information does not indicate what tax year this lien addresses. Given the information on the 2008 tax transcript and the date this lien was filed, the lien concerns unpaid taxes for a tax year prior to 2008. Applicant has not provided any information specifically about this lien and its status. Applicant paid the 2010 tax debt owed the state in March 2011, and the related tax lien has been released.¹¹

Applicant prepared a financial statement in March 2013 for his student loan rehabilitation request. The record lacks any current financial statement. In 2013, Applicant indicated that he and his wife had a net monthly income of \$9,000. Applicant listed his basic monthly expenses at \$5,018. He did not include medical or gasoline expenses, which are estimated at \$250. These non-included expenses, plus \$169 a

⁸Item 6; Item 7; AE A-3; AE A-4.

⁹The tax transcript reflects that the refund was applied to a tax debt for the tax year 2006, which is not alleged in the SOR. AE A-1.

¹⁰The IRS installment agreement documentation indicates that Applicant owes taxes for the tax years 2005, 2007, 2008, 2009, 2010, and 2011. The total amount of his tax debt is unknown. Any tax refund to which he is entitled is being applied to his tax debts. AE A; AE A-1.

¹¹Item 1; Item 3; Item 4; Item 6; AE A; AE A-1.

month for his student loan payment and \$347 a month for his tax payment, increase Applicant's monthly expenses to approximately \$5,800, leaving more than \$3,000 a month for payment of debt and unexpected expenses.¹²

Applicant admits that he filed a Chapter 7 bankruptcy in March 2000, and that his then existing debts were discharged in September 2000.

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

¹²AE A-2.

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, and their housing costs began to increase causing strain on their finances. The IRS filed a tax lien against Applicant in 2008 for unpaid taxes. 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:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (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 contacted the creditors in SOR allegations 1.g (\$148), 1.i (\$55), and 1.p (\$12,308) to resolve his debts. He paid the two smallest debts. He contacted the creditor holding his student loan debt more than two years ago and initiated payments to rehabilitate his student loans. His student loans are now current, and he is making his monthly payments as required. His actions reflect a good-faith effort on his part to resolve these debts. AG ¶ 20(d) applies to these debts only.

Applicant has developed a payment for his federal tax debt, for which he is given credit. The extent of his federal tax debt is unknown. The status of the tax lien issue raised in the SOR is unknown. Applicant has decided not to pay the remaining money owed on the car repossessed nor has he made any effort to pay the old debts which are no longer on his credit report.¹³ The record lacks sufficient information to show that Applicant's unpaid debts are resolved.

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

¹³These debts are barred from collection under the law because of their age. The Appeal Board has declined to consider debts barred from collection under statute of limitations laws resolved for purposes of mitigation in security clearance cases.

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's financial problems first began when he purchased a new home and failed to understand the terms of his mortgage loans. As his mortgage payments increased, his ability to pay his expenses decreased. He fell behind on many of his bills. Eventually, the mortgage lender foreclosed on his property. With the loss of his high mortgage payments, Applicant reduced his monthly living expenses, but did not take any action to pay his overdue debts. While he paid two smaller debts and negotiated a payment plan for his student loans and tax debts, he has chosen not to take any action on many of the SOR debts. Applicant's track record for paying debt is limited and insufficient to show that he has mitigated the security concerns raised about his finances. His bankruptcy discharged debts in the past, yet after given a fresh start, Applicant again failed to manage his income and expenses. Since Applicant's wife works in commissioned sales, the failure to properly report her income in 2008 and 2010 is not considered intentional

given that the credit she receives for her commissions may not always be properly credited to her immediately or reported at a later time. The evidentiary record as it currently stands lacks clear information to show that Applicant has taken the necessary actions to mitigate the security concerns raised in the SOR.

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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h- 1.j:	Against Applicant
Subparagraphs 1.k-1.m:	For Applicant
Subparagraphs 1.n-1.o:	Against Applicant
Subparagraphs 1.p-1.s:	For 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 a security clearance is denied.

MARY E. HENRY
Administrative Judge