



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00368
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Le'i Garcia, Esquire, Department Counsel  
For Applicant: *Pro se*

10/16/2014

**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 July 25, 2007. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on March 12, 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 to the SOR allegations dated April 18, 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 August 8, 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 did not submit a response. DOHA assigned this case to me on October 9, 2014. The Government submitted eight exhibits, which have been marked as Items 1-8 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.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the factual allegations in 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 34 years old, works as a mechanic for a DOD contractor. He began his current employment in May 2006. He previously worked as a mechanic in private industry for two years.<sup>1</sup>

Applicant graduated from high school. He attended a vocational school from October 2000 until April 2004. He graduated from the program and received his A&P license. Applicant and his wife married in January 2010. They have two daughters, ages seven and four. His wife has a ten-year-old son, who lives with them. Applicant provides financial support of his wife and three children.<sup>2</sup>

As of November 2013, Applicant earned \$4,100 a month in gross income. He also can earn additional income from overtime, holiday pay, powerplant (not explained) and PQV level II (not explained).<sup>3</sup> On his financial statement, he listed his net monthly income at \$2,827, based on his pay for a 40-hour work week. It does not include any overtime pay, which is not guaranteed, or his other pay. He listed his monthly expenses on his financial statement at \$2,417, leaving \$410 for debt payment. He told the

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<sup>1</sup>Item 1; Item 4.

<sup>2</sup>Item 4.

<sup>3</sup>Applicant's earnings statement for the last week of November 2013 reflects that he worked 42 hours, but he was paid for 58 hours as he had 16 hours of holiday pay. He also received \$29.50 for powerplant G and \$59 for PQV Level II for a total gross income of \$1600.67 for that week. His paycheck for the second week of November 2013 reflects that he worked 38 hours plus 14 hours of overtime. He had two hours of paid time off, and he received \$31.40 for powerplant and \$62.80 for PQV Level II. Item 4.

investigator from the Office of Personnel Management (OPM) that he can pay his monthly expenses, but he can only pay his debts if creditors will accept a small payment.<sup>4</sup>

The SOR identifies 14 unpaid debts, totaling \$30,095. In December 2011, Applicant reported these debts to his security officer, who then filed an incident report. Applicant advised that his debts arose because he purchased items he wanted without thinking about how he would pay for the items.<sup>5</sup>

In August 2013, Applicant contacted the creditor identified in SOR allegation 1.c. In a letter dated August 22, 2013, the creditor offered to settle its \$4,488 debt for the full amount. The creditor set forth a payment plan which required an initial payment of \$600 and monthly payments of \$100 until the debt was paid. Applicant provided a letter from the current creditor holding this debt.<sup>6</sup> In its April 2014 letter, the creditor indicated that Applicant had paid \$1,300 on this debt and that he owed \$1,150 on the debt. The creditor requested a payment of \$900 by April 30, 2014 and a final \$250 payment by May 15, 2014. Applicant has not provided any evidence of these payments.<sup>7</sup>

In his response to the SOR, Applicant advised that he would pay the \$129 medical bill in SOR allegation 1.g, the \$129 medical bill in SOR allegation 1.h, and the \$80 medical bill in SOR allegation 1.j in April 2014. He has not provided any documentation which indicates he made these payments.<sup>8</sup>

Applicant negotiated a settlement of the \$822 debt in SOR allegation 1.k. The creditor agreed to a payment of \$575.75 on March 13, 2014 and three payments of \$82.25 on March 28, 2014, April 11, 2014, and April 25, 2014. These payments would pay the debt in full. Applicant did not provide any documentation which showed that he complied with this payment agreement.<sup>9</sup>

The credit reports in the record indicate that Applicant settled a \$2,000 bank debt for less than the full amount. This debt is not listed on the SOR. Applicant has not had credit or financial counseling.<sup>10</sup>

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<sup>4</sup>Item 4.

<sup>5</sup>Item 1; Item 4; Item 8.

<sup>6</sup>Between August 2013 and April 2014, a new creditor assumed this debt. The account number for the original debt is the same with each creditor. Item 2: Item 4.

<sup>7</sup>Item 2; Item 4.

<sup>8</sup>Item 2.

<sup>9</sup>Item 2.

<sup>10</sup>Item 5 - Item 7.

## 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 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 when he purchased items on credit as he lacked the income to purchase the items for cash. Over time, he fell behind in his monthly payments. 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:

(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 pays his current bills. With his limited residual income, he can pay his past-due debts one at a time. He has contacted three of his creditors and negotiated a settlement or a payment plan for these debts. He paid one debt and paid \$1,300 on a second debt. While he agreed to payments to resolve one debt and to conclude his payments on the debt on which he had made some payments, he has not provided any evidence that he complied with these payment agreements or that he paid the three medical bills in April 2014. Since documentation is lacking, he is entitled only to partial credit under AG ¶¶ 20(c) and 20(d).

## 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’s financial problems started with his poor decisions to pay for items using credit. He purchased items he could not afford, eventually creating debts he could not pay. To his credit, he appears to be working towards managing his debts and controlling his spending habits. He paid one debt as reflected on his credit reports, and he partially paid another debt. Although he is not required to pay all his debts at one time, he has not articulated a clear plan to resolve his debts. He contacted two creditors to work out a resolution of those debts. He did not submit documentary evidence which showed that he complied with the terms of these agreements. The record lacks documentary evidence showing debt payments in 2014 or a track record for debt payment. He has not provided documents which would give a clear understanding of his current income and expenses and his ability to pay his past-due debts. At this time, it is unclear how he is managing the payment of his debts.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d - 1.n:	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.

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MARY E. HENRY  
Administrative Judge