



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



In the matter of:)	
)	
)	ISCR Case No. 14-01122
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

02/20/2015

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 June 11, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on May 23, 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 June 16, 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 October 9, 2014. Applicant received the FORM on October 20, 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 February 3, 2015. The Government submitted nine exhibits, which have been marked as Items 1-9 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.

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 43 years old, works as a software engineer for a DOD contractor. He began working for his current employer in 2006. Applicant previously worked as a software engineer contractor to his employer from 2000 until 2006.¹

Applicant graduated from high school. He attended college between 1990 and 1993, but he did not receive a degree. Applicant married his first wife in 1996, and they divorced in 2010. They have three sons, ages 18, 16, and 11. He married his second wife in 2011. They have a son, age 4. He has a stepson, age 18, and a stepdaughter, age 14.²

As part of his divorce agreement, Applicant pays \$330 a week in child support and alimony. His 18-year-old son lives with him, and his 16-year-old and 11-year-old sons live with his former wife. His stepchildren and 4-year-old son live with him. In the divorce, Applicant's former wife retained use and occupancy of the marital home until October 2014. By this date, she had the option of buying Applicant's interest in the marital home or moving out of the home so that it could be sold. The record lacks any evidence that either event has occurred.³

¹Item 4.

²Item 4; Item 5.

³Item 3; Item 5.

Applicant earns approximately \$5,932 a month in gross income, and he receives approximately \$3,366 a month in net income. His \$1,320 a month in child support and alimony is paid directly out of his pay. His household expenses as of December 2013, include \$800 for rent, \$500 for food, \$310 for utilities, \$275 for gasoline and car insurance, \$100 for medical expenses, \$30 for clothing, and \$30 for miscellaneous expenses. Based on his December 2013 financial statement, his monthly expenses total \$2,075, leaving \$1,290 a month for debt payments.⁴ Applicant does not indicate if the utility bills include cable and telephone bills. His estimate for clothing and miscellaneous expenses appears to be low. He indicates that he does not have any money to pay his outstanding debts. He does not state if his wife works and contributes to the household income. Based on the information presented in this record, his actual household income and expenses are not fully explained.⁵

The SOR lists 25 debts, totaling \$25,893. Of the 25 debts, 17 debts are under \$300 and 9 of the 17 debts are under \$100. Applicant has made no attempt to pay even the smallest debts, although it appears he has residual income to do so. Applicant plans to pay his debts with the proceeds from the sale of the marital home from his first marriage. He has not provided any documentation, showing that his former wife has moved out of the house or that she has purchased his share of the house. Likewise, he has not provided documentation showing the house is for sale or has been sold. The record lacks any evidence that Applicant is receiving financial counseling.⁶

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.

⁴Applicant included the \$1,320 in child support and alimony in his monthly expenses even though this money is deducted from his gross income. According to his earnings statement, the child support and alimony payments are part of the regular deductions from his pay. I have not included the support payments in his itemized expenses. Item 5.

⁵Item 3; Item 5.

⁶Item 1; Item 3.

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 over recent years. As of the date of the SOR, the enumerated 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.

Applicant's debts arose, in part, from his divorce in 2010. He pays \$1,320 a month in child support and alimony, which reduces his household income significantly. Some of the medical bills appear to be related to expenses incurred after his divorce. AG ¶ 20(b) is only partially applicable, because Applicant has not taken any action to resolve the debts listed in the SOR, even those debts under \$100.

The remaining mitigating conditions are not applicable because Applicant has not made any effort to contact his creditors to work out a resolution of his debts nor has he articulated a reasonable plan to repay his debts. From this record, it appears that he is waiting for his former wife to either buy out his share of the marital home or to move out of the home, so that it can be listed for sale. He has not provided any documentation showing that either event has occurred. When or whether either event will occur is nothing more than a possibility sometime in the future and is not sufficient to establish mitigation. He does not have an alternative plan for the resolution of his delinquencies. At this time, his overdue debts are neither resolved nor are there any clear indications that his debts are under control. He has not mitigated the security concerns concerning his unpaid 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 pays his child support and alimony through his pay. He also provides support for his new family. His only plan to resolve his past-due debts is to use the funds from the sale of the marital home or the funds provided to him by his former spouse from her purchase of his interest in the marital home. While the funds certainly could be used to pay his debts, as of this time, the record lacks any evidence that the home has been sold or purchased. Applicant has not taken any other action towards resolving his debts nor has he established any plan to resolve his debts. He has not shown a track record for payment of his debts. His failure to take action shows a lack of responsibility and raises a concern about his holding a security clearance.

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 did not mitigate 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.y:	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