



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



In the matter of:)	
)	
)	ISCR Case No. 14-01850
)	
Applicant for Security Clearance)	

Appearances

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

03/23/2015

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 December 12, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 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 on July 22, 2014, and he answered it on August 14, 2014. Applicant requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on September 22, 2014, and I received the case assignment on October 16, 2014. DOHA issued a Notice of Hearing on November 26, 2014 and an Amended Notice of Hearing on December 3, 2014 (location change). I convened the hearing as scheduled on December 9, 2014. The Government offered exhibits (GE) marked as GE 1, GE 3, and GE 4, which were received and admitted into evidence without objection. After verification by Applicant, GE 2 was admitted into evidence. (Tr. 51) Applicant testified. He submitted exhibits (AE) marked as AE A through AE E, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 18, 2014. I held the record open until January 9, 2015, for Applicant to submit additional matters. Applicant timely submitted AE F - AE L, which were received and admitted without objection. The record closed on January 9, 2015. Following an inquiry about information in the record, hearing exhibit (HE) 1, a series of emails, is included in the record.

Procedural Ruling

Notice

Applicant received notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 8.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the two 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 51 years old, works as quality assurance inspector for a DOD contractor. Applicant has worked for his employer or its predecessor company for 30 years. The record lacks any evidence of disciplinary action taken against him by his employer. His director wrote a character reference letter, recommending Applicant for a security clearance. She described Applicant as a committed, enthusiastic and dependable employee. Applicant has a willingness to take on new assignments, work overtime and do whatever is needed. His director states that Applicant has earned and maintained her full trust. She has every confidence that he can manage the responsibility associated with handling classified information.¹

¹GE1; AE E; Tr. 23. Applicant's director did not indicate any knowledge of the issues raised in the SOR. AE E.

Applicant graduated from high school and attended college for a time. In 2002, he received a computer certification after completing computer training. He and his wife married in 1987. They do not have any children.²

Applicant provided a copy of his leave and earnings statement from November 6, 2014 through December 31, 2014. In December 2014, his hourly wage increased from \$23.93 an hour to \$24.89 an hour. He occasionally works overtime. He earns \$3,981 a month in gross income, not including any overtime, and he receives \$2,129 a month in net pay. Applicant's filing status is married, and he claims zero withholding exemptions for federal and state taxes. He has an additional \$10 a paycheck withheld for federal taxes and an additional \$5 a paycheck withheld for state taxes.³

Applicant provided a copy of his wife's earnings statement. She earns \$2,450 a month in gross income, and she receives \$2,051 a month in net income. Her filing status is married, and she claims one exemption for federal and state taxes. She also has an extra \$10 a paycheck withheld for federal taxes. Applicant's wife received additional income, on a one-time basis, in December 2014 in the gross amount of \$336 for unused vacation time.⁴

Applicant's total net household income is \$4,180. His monthly expenses include \$1,918 for rent, \$135 for rent insurance, \$124 for car insurance, \$150 for water and utilities, \$91 for internet, \$50 for life insurance, \$395 for taxes, \$89 for student loans, and \$50 for credit card payments. His expenses total \$3,002. He did not include food or gasoline in his monthly expenses. I estimate these expenses at \$600 a month, leaving \$400 for other unanticipated expenses.⁵

The SOR identifies two debts of a security concern. Applicant and his wife purchased a time share, which they sold back to the company in 2005. When he met with the Office of Personnel Management (OPM) investigator, the investigator presented him with documents showing money owed on his time share account. He advised that he was unaware that he owed money on his time share. He indicated that he would investigate this debt, and if he owed the money, he would pay it. In August 2014, after determining that he did owe money on his timeshare debt, he reached a settlement with the creditor on his debt. He made a payment in October 2014 in the amount of \$842 and a second payment in December 2014 in the amount of \$786, which resulted in a zero balance on his account. He has resolved this debt.⁶

²GE 1; Tr. 23-24.

³AE J.

⁴AE K.

⁵AE L.

⁶GE2; AE A; AE F; AE H; Tr. 24-25, 49.

Applicant and his wife purchased a home in late 2006. As a result, he commuted a much greater distance to work, causing an increase in the cost of gasoline and other related commuting costs. By 2012, he and his wife decided to move closer to work. They sold their house through a short-sale and do not owe any money on this debt as shown on his January 7, 2014 and September 22, 2014 credit reports.⁷

When he completed his e-QIP, Applicant acknowledged that he failed “to pay” the federal taxes he owed for tax years 2004, 2006, and 2008 through 2012. He did not check the box on his e-QIP indicating that he did not file his tax returns. He told the OPM investigator that he did not have the money to pay his taxes when the taxes were due. At the hearing, he indicated that he did not file his taxes because he did not have the money to pay the additional taxes he owed. After the hearing and in response to a request for clarification of his statements at the hearing, to the OPM investigator, and to his e-QIP responses, Applicant advised that he filed his tax returns late in each year (it is unknown if he requested an extension of time to file his returns) and that his financial situation prevented him from paying the additional taxes owed. His indebtedness to the Internal Revenue Service (IRS) for unpaid federal income taxes is the second security concern raised in the SOR. The SOR alleges that he failed to pay his taxes not that he failed to file his tax returns.⁸

In 2013, Applicant received a letter from the IRS advising how much he owed in unpaid taxes, plus penalties and interest, for tax years 2004, 2006, and 2008-2012. Applicant’s wife immediately contacted the IRS and reached an agreement to pay their tax debt. Under the terms of the agreement, Applicant and his wife agreed to pay \$395 a month until the tax debt was paid. They began their payments in July 2013 and have made their monthly payment each and every month since. At the hearing, Applicant advised that he owed additional taxes for the tax year 2013 and that he entered into a payment plan with the IRS to pay this debt. The November 19, 2014 IRS payment statement reflects that Applicant owes \$787 additional federal taxes for the 2013 tax year and that this money is included in his payment plan. Applicant provided documentation to show his monthly payments through January 2015. He is slowly reducing his tax debt.⁹

The IRS provided Applicant with an annual statement that showed his payments under his installment agreement between July 2013 and July 2014. Included in this statement is a listing of the taxes owed for tax years 2004 (\$1,715), 2006 (\$22,027), 2008 (\$933), 2009 (\$1,591); 2010 (\$2,704), 2011 (\$179); and 2012 (\$1,312). The reason for a \$22,026 tax debt for tax year 2006 is not explained. This tax debt far exceeds the

⁷GE 2 - GE 4; Tr. 26.

⁸SOR; GE 1; GE 2; HE 1; Tr. 26-27.

⁹AE B; AE C; AE G; AE H; Tr. 28-32.

amounts owed for any other years. His income for 2006 is unknown. For his 2012 taxes to be included in the payment plan, Applicant's tax return had to have been timely filed.¹⁰

At the hearing, Applicant acknowledged that he did not initiate contact with the IRS to pay his past-due taxes. The IRS never filed a lien against him nor did it garnish his wages. Applicant indicated that when he encountered financial difficulties, he made choices to pay his housing and living expenses over his significant tax debt. He acknowledged that his financial problems arose in part due to poor financial management. The credit reports reflect that he pays his customary living expenses; that he has no other outstanding debts; and that the IRS did not file a lien against him.¹¹

The IRS and state revenue board documents reflect that Applicant incurred a significant tax debt for the 2006 tax year. He owed more than \$22,000 on his federal income taxes and he owed more than \$16,000 on his state income taxes. The reason for the high level of tax debt is not explained. The money owed relative to the other years is inordinately high and unexplained by Applicant or his documents.¹²

The record does not contain any documentation reflecting that Applicant participated in a credit or financial counseling program. The credit reports do not show significant unpaid debts or overuse of credit cards. Applicant acknowledged that he missed school loan payments at times because of limited finances. His school loans are current and timely paid. Applicant lives within his financial means.¹³

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.

¹⁰AE B.

¹¹GE 3; GE 4; AE B; Tr. 46-50.

¹²AE B; AE I.

¹³GE 2 - GE 4; Tr. 49.

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;

(c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant developed significant tax problems in 2006. He also failed to pay the additional federal and state taxes he owed for subsequent years. At the time of the issuance of the SOR, most of the tax debt and one other bill had not been paid. AG ¶¶ 19(a) and 19(c) apply. On his e-QIP and in his statements to the OPM investigator, Applicant stated that he did not pay the additional taxes he owed for tax years 2004, 2006, and 2008 through 2012. Based on a review of his e-QIP answers, his personal subject interview summary, the IRS documents, his testimony, his email clarification, and the SOR allegation that he failed to pay his taxes, I find that Applicant filed his tax returns, but did not pay the additional taxes he owed. AG ¶ 19(g) applies because he filed his tax returns late, not as required.

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 was unaware of the debt remaining on his time share until the OPM investigator presented him with evidence of the debt in the January 2014 interview. As he said he would do, Applicant investigated the debt, which can be a lengthy and time consuming process when working with collection companies. He concluded that he did owe money to this creditor. He negotiated a final settlement of the debt in good faith on the same date that he submitted his answer to the SOR. Because it takes time to verify and settle a debt, I find that he began the process to settle this debt after he met with the OPM investigator. As agreed, Applicant made two payments, which resolved the debt in full. AG ¶ 20(d) applies to SOR allegation 1.a only.

Applicant did not initiate action to resolve his federal tax debt. In 2013, the IRS sent him a letter seeking payment of the taxes owed and requested that he contact them. The IRS sent this letter prior to filing a tax lien or garnishing Applicant's wages. Applicant's wife immediately contacted the IRS and negotiated a payment plan. He began the plan payments in July 2013, one year before the issuance of the SOR and

five months before he completed his e-QIP. He has made all the necessary payments required by the plan.¹⁴

In the instant case, Applicant met his legal obligation to file his tax returns, although somewhat late some years, but before any action was taken by the IRS. When he filed his 2006 tax return, he owed more than \$22,000 in additional taxes. He did not have the money to pay the additional taxes owed. He did not contact the IRS and inquire about ways to resolve this problem, which would have shown more good faith on his part. He filed his 2007 taxes and did not owe any additional taxes. Beginning in 2008, he filed his tax returns, but lacked sufficient income to pay all the additional taxes he owed, including his 2006 taxes. He also owed significant state taxes for the tax year 2006.

Applicant and his wife's current earnings statements reflect that they are not claiming excessive exemptions. Between them, they have one exemption, and both are having additional funds taken out of their pay for federal taxes.¹⁵ Exactly what exemptions and allowable deductions existed at the time they filed the past tax returns and their overall expenses are unknown. By 2012, Applicant decided to move closer to work and to sell his house through a short-sale. This decision helped him to reduce his overall living expenses. While he did not initiate contact with the IRS to pay his outstanding debt, he quickly responded to the request from the IRS to call. He voluntarily developed a payment plan for payment of his past-due taxes.

Following the purchase of his house, Applicant's commuting costs to work increase more than he anticipated. By April 15, 2007, the date his 2006 taxes were due, Applicant faced increased financial difficulties. The amount of taxes owed for the tax year 2006 is substantial in comparison to his income. Applicant faced the difficult choice about which bills to pay with his limited financial resources. He made housing and commuting expenses his priority, not his taxes. He continued to make this choice for sometime. Applicant found himself between a "rock and a hard place" when making decisions about how to allocate his resources. He fell behind in his education loan

¹⁴Recently, the Appeal Board issued a decision denying an Applicant's security clearance after the Applicant repaid the IRS more than \$100,000 through a wage garnishment for taxes owed over a period of 10 years. In this case, the Appeal Board stated that "a person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information." The Appeal Board noted that a person who has a history of failing to file [emphasis supplied] income tax returns does not demonstrate a high degree of judgment and reliability required for access to classified information, citing ISCR Case No. 98-0608 (App. Bd. Jun. 27, 2000). The Appeal Board appears to have been troubled by the fact that the Applicant did not file his tax returns and took no action to pay his taxes until his wages were garnished. According to the Appeal Board, the failure to file taxes or to pay overdue taxes until garnishment action is taken significantly undercuts the strength of the Applicant's filing of his tax returns three years before his hearing. Two key factors emphasized by the Appeal Board, failure to file tax returns and garnishment, are not present in Applicant's case. ISCR No. 12-05043 (App. Bd. Oct. 30, 2014).

¹⁵Applicant should examine his tax withholding amounts to make sure enough money is being withheld to pay his taxes each year as he does not have mortgage interest or property taxes to deduct from his gross income when computing the taxes owed.

payments, which he has brought current. He sold his house and moved closer to work to cut his commuting expenses. This decision helped increase his cash flow. Applicant did not incur additional credit card debt or other types of credit debts. He developed a payment plan with the IRS and has complied with the agreement. See note 17, *supra*. He resolved his past-due state taxes both through garnishment and personal payments. AG ¶ 20(c) is applicable.

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 and his wife purchased a house some distance from his place of employment. As a result of this decision, Applicant and his wife began to experience difficulties with paying all their monthly expenses. In 2007, when they filed their federal and state tax returns for tax year 2006, they owed almost \$40,000 in additional taxes. They did not have the money to pay these taxes. Faced with making choices on what to pay, Applicant and his wife deferred payment on the taxes owed while paying their basic living expenses. Because of these high taxes, Applicant deferred payment of any additional taxes due each year until 2013 as he could not pay the 2006 past-due taxes. During this time, his commuting costs increased as the price of gasoline and other related commuting costs rose significantly. Other basic living expenses, such as food and utilities, also increased during this time. Applicant was in the difficult position of choosing between paying his housing and food costs or paying his past-due taxes because he did not have sufficient financial resources to do both. He eventually decided to sell his home through a short sale and move closer to work. This decision reduced his living expenses and permitted him to work towards improving his finances and resolving his tax issues.

Applicant’s financial problems resulted in the short-sale of his house after he began to miss payments. The credit reports of record reflect that Applicant has a track record for paying customary bills. He brought his student loans current after falling behind in his payments and now timely pays this loan. He negotiated and paid a settlement of the only other SOR debt. He complies with the terms of his IRS payment plan. Applicant’s failure to pay his additional taxes when due shows a lack of responsibility. However, given the large amount of taxes owed in 2006, Applicant’s lack of responsibility is weighed against the difficult decision of paying his taxes or paying his basic living expenses. He chose to defer paying. In all other aspects of his life, he acts responsibly and follows the rules of society. His director concurs about his ability to act responsibly as she has observed him at work for many years. She described him as a committed, enthusiastic and dependable employee who is willing to take on new assignments and work overtime. He has earned her trust, and she is confident that he

can manage the responsibility of handling classified information. I have carefully reviewed all the evidence in this record, Applicant's testimony, and the recent decisions of the Appeal Board. Applicant's only motive for not timely paying his additional taxes is lack of financial resources, not extravagant living. His finances have improved, enabling him to rehabilitate his debts and establish his financial responsibility. Given his lifelong compliance with all other rules of society, his failure to completely pay his tax debt and instead to rely on the IRS payment plan is not likely to be a source of coercion, pressure, or duress. There is little likelihood that he will not pay taxes owed, using a payment plan as needed, in the future. Based on a common sense review of the evidence of record and assessment of Applicant, I conclude that he has mitigated the security concerns raised by his decision to utilize the IRS payment plan to resolve his tax debt.

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

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