



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



In the matter of:)	
)	
)	ISCR Case No. 14-02442
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esquire, Department Counsel
For Applicant: *Pro se*

01/28/2016

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 denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on January 31, 2013 and signed it on February 4, 2013. The Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on July 21, 2014, detailing security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. 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 August 4, 2014, and he answered it on June 23, 2015. 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 10, 2015, and I received the case assignment on September 24, 2015. DOHA issued a Notice of Hearing on October 2, 2015, and I convened the hearing as scheduled on October 20, 2015. The Government offered exhibits (GE) marked as GE 1 through GE 5, which were received and admitted into evidence without objection. Applicant testified. He submitted exhibits (AE) marked as AE A and AE B, which were received and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 4, 2015. I held the record open until November 19, 2015, for Applicant to submit additional matters. Applicant timely requested additional time to submit the documentation. Department Counsel objected to the additional request for time. By order dated November 19, 2015, I granted Applicant's request for additional time and held the record open until December 1, 2015. Applicant did not submit any additional documentation. The record closed on December 1, 2015.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.c, 1.e - 1.g, and 1.i. of the SOR. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.d, 1.h, and 2.a 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 33 years old, works as an aircraft worker for a DOD contractor. He began his current position in June 2011. Since this time, his employer has changed several times, but not his work. Throughout the sales of the companies, he experienced one month of unemployment in 2012.²

Applicant enlisted in the United States Air Force in May 2001. He received an honorable discharge in May 2011. He currently receives a disability benefit.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).

²GE 1; Tr. 19-21.

³GE 1; GE 2; Tr. 20-21, 60.

Applicant graduated from high school in 2001. He attended college for one semester in the spring of 2003 and in the fall of 2010. Applicant married in October 2014, and he expected the birth of his first child in January 2016.⁴

Applicant purchased a house in November 2004 for \$149,500. He initially lived in the house with a former girlfriend and fiancé. When he returned from a deployment in late 2007 or early 2008, he discovered that his fiancé had left. He stated that he lost interest in many matters. He indicated that because he did not care about anything, he stopped paying his bills. The credit reports reflect that in March 2008, his mortgage account was purchased by another lender. Applicant contacted his mortgage lender at sometime in 2008 and received approval from the lender for a modification of his home mortgage. His mortgage payment increased from \$958 a month to \$1,058 a month. He made payments on the new mortgage through December 2009, but again fell behind in his monthly payments when he paid for repairs to the house. After foreclosure proceedings began, he and the lender eventually agreed to the sale of the house through a short-sale in 2013. He does not owe any balance on the mortgage because under state law, he is not liable for any deficiency on the mortgage. The 2014 and 2015 credit reports reflect that the mortgage was paid for less than the full balance. This debt was not listed on the SOR.⁵

The SOR identified nine purportedly continuing delinquencies as reflected by credit reports from 2013, 2014, and 2015, totaling approximately \$28,375. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in both credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.

SOR allegations 1.a through 1.h concern debts that became delinquent between February 2008 and February 2009 as reflected in the credit reports of record. The last SOR debt, allegation 1.i (\$4,000), relates to his homeowners' association dues. Although this debt is not listed on the credit reports, Applicant listed this debt on his e-QIP. He told the OPM investigator that the homeowners association placed a lien on the home he owned until 2013. He tried to negotiate a payment plan, but he and the homeowners association never reached a final agreement, and the debt remains unpaid to his knowledge.⁶

⁴Tr. 21.

⁵GE 2 - GE 5; Tr. 23-26, 51-52.

⁶GE 2; Tr. 41-42. Because the homeowners' association placed a lien on his property, any sale of the property would likely include a release of the lien, meaning the parties reached a resolution of the fee issue. This debt may be resolved, but Applicant did not provide documentation to reflect this point.

When Applicant met with the investigator from the Office of Personnel Management (OPM) in February 2013, he denied knowing the creditors and owing the debts in SOR allegations 1.d (\$2,809) and 1.e (\$7,293). He denied membership in the gym owned by the original creditor in SOR allegation 1.f (\$314). He also denied owing any money to the creditor, a cell phone company, in SOR allegation 1.g (\$224). Applicant admitted owing the debts in 1.e, 1.f, and 1.g in his response to the SOR, but he again denied owing money to the creditor in 1.d.⁷

At the hearing, Applicant again denied membership in a gym owned by the creditor in 1.f (\$314). He recently disputed this debt with the creditor. He also denied owing any additional money to the cell phone company because he paid the company more than \$400 when he closed his account several years ago. He has no proof of payment.⁸

At the hearing, Applicant continued to deny recognizing a debt owed to the creditor in SOR allegation 1.d (\$2,809). The 2013 credit report indicates this debt is charged off, and the 2014 credit report reflects that the debt was transferred, sold, and paid. The debt does not appear on the three 2015 credit reports.⁹

The information in the record provides conflicting information about the debt in SOR allegation 1.c (\$5,784). The creditor shown on the SOR is a credit collection company, and the second creditor is the original creditor. The 2013 credit report identifies only the original creditor and indicates the following information: pays as agreed, zero balance, high credit of \$3,575, terms of 48 months at \$108 a month, and account transferred, paid and closed as of March 2008. The 2014 credit report identifies the collection company and the original creditor, and the report shows two payment history dates and balances in June 2013 (\$5,420) and February 2014 (\$5,784). It also shows the date of May 2008 without further information. All three 2015 credit reports contain the same information as the 2013 credit report and do not reference or list the credit collection company. Applicant is not sure, but opined that the debt may be related to his motorcycle. Because he holds title to the motorcycle, he believes the debt is paid.¹⁰

In addition to the SOR debts, Applicant acknowledged a debt owed on his military credit card. This debt is being paid with his income tax refund each year. The October 2015 credit reports identified two additional new utility debts for \$179 and \$367.

⁷Response to SOR; GE 2; Tr. 29-30, 36-42.

⁸AE B; Tr. 29-30, 36-42, 56.

⁹GE 2 - GE 5; AE A; AE B; Tr. 36.

¹⁰GE 3 - GE 5; AE A; AE B; Tr. 34-35. The fact that he holds title may not be enough to establish that his debt is paid because some states issue separately a title document and a lien document. No efforts have been made to repossess his motorcycle, a stronger indication that the debt is paid.

He believed these debts related to the house he owned. He stated that he paid the bills when he moved in 2013, but he did not provide any proof of payment.¹¹

The credit reports reflect that Applicant pays his monthly bills and has since 2009 with the exception of his mortgage and homeowners fees. Applicant advised that he poorly managed his finances as a young man. At this time, he does not have credit cards and pays cash for items he wants. He has not participated in financial counseling nor has he retained the services of a debt repair company or a debt consolidation company. Applicant has no clear idea about how to approach or resolve his SOR debts. SOR allegations 1.d through 1.h are not listed on his 2014 and the 2015 credit reports. He timely files his federal and state income tax returns each year.¹²

Applicant did not provide a copy of his current earnings statement or a budget. When he met with the OPM investigator, he provided the following financial information about his monthly income and expenses: \$2,654 in net income and \$570 in military disability income for a total net income of \$3,224. His monthly expenses included \$1,078 on mortgage, \$192 on utilities, \$150 for cell phone, \$130 for Direct TV, \$30 for cable, \$400 for food, \$182 for vehicle insurance, and \$120 for gasoline for total expenses of \$2,282. He also advised that he would be paying \$150 on the homeowners debt (allegation 1.i), but he did not make this payment. Miscellaneous expenses were not included in the above listing of expenses. Applicant estimated that he had at least \$200 at the end of each month. At the hearing, Applicant advised that he earned \$21 an hour and usually worked 40 hours a week for a total gross monthly income of \$3,360 and that his military disability income had just increased to approximately \$640 a month. His wife earned \$12 an hour at her full-time job and \$5 an hour plus tips at her part-time job. Following the birth of their child, he anticipates that his wife would return to her part-time job only. He paid \$1,000 a month in rent, reducing his housing costs by \$78. His wife paid \$350 a month on her car and \$100 a month on her school loans. They no longer had cable, which decreased their expenses by another \$30 a month. This information reflects that he has sufficient income to pay his customary monthly expenses.¹³

When he completed his e-QIP, Applicant listed his unpaid homeowner association debt. He answered “no” to the questions in Section 26 asking about other unpaid debts. He told the OPM investigator that he did not list the problems with his mortgage on the e-QIP because he had “settled” the issue. At the hearing and in his response to the SOR, Applicant denied intentional falsification of his e-QIP answers. He stated that he never had a judgment or foreclosure. He is not sure why he did not list his

¹¹AE A; AE B; Tr. 32-33, 44.

¹²GE 2 - GE 5; AE A; AE B; Tr. 45, 61.

¹³GE 2; Tr. 47-49.

other debts, but believes that he may have misread the question as he had old “stuff” which he thought was more than seven years old.¹⁴

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.

¹⁴GE 2; Tr. 43-46, 54

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.

Applicant developed significant financial problems after his former fiancé ended their relationship, and he stopped paying his bills. Several 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Eight of the nine SOR debts occurred between six and seven years ago, making the debts uncollectible under the state statute of limitation laws, which give creditors a specific time in which to file a lawsuit to collect the debt owed. In the years since 2009, Applicant has not incurred new credit card debt and only two small, new unpaid debts. He refinanced his home mortgage through a home loan modification program in 2008. He again fell behind in his new mortgage payments by December 2009. He ignored the requirement for homeowners association dues payments, which resulted in a lien against his property. He sold this property in 2013 through a short-sale, which eliminated his monthly mortgage payment. Although his debts are barred from collection under state law, under DOHA Appeal Board decisions, these unpaid debts are viewed as continuing and ongoing, making mitigation under AG ¶ 20(a) inapplicable.

The end of his long-term relationship in late 2007 or early 2008 impacted him. However, AG ¶ 20(b) is not applicable because Applicant's subsequent decision to ignore the payment of his debts shows a lack of responsibility and judgment. Likewise, AG ¶ 20(d) is not applicable because Applicant has not made any effort in the last six years to resolve any of his past-due debts. I have credited Applicant with mitigating the debts in SOR ¶ 1.c and 1.d because the overall credit report information reflects that these debts are paid.

While Applicant has not received financial or credit counseling, he has learned to manage his current income and expenses. He lives within his monthly income and has sufficient income to meet his usual and customary expenses. AG ¶ 20(c) is partially applicable. Applicant has consistently denied the gym membership debt in allegation 1.f because he never belonged to this gym. He disputed this debt, making AG ¶ 20(e) applicable to this allegation.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The Government alleges Applicant falsified his 2013 e-QIP (SOR ¶ 2.a) when he failed to list all the debts in the SOR. For AG ¶ 16(a) to apply, Applicant's omissions must be deliberate. The Government established that Applicant omitted material facts from his 2013 security clearance application when he answered "no" to questions in Section 26 about unpaid debts. This information is material to the evaluation of Applicant's trustworthiness and honesty. Applicant denied intentionally falsifying his answers on his security clearance applications.

When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.¹⁵

Applicant's statement that he may have misread the question because his debts were "old stuff" is credible. Most of the SOR debts occurred four to five years before he completed his e-QIP, Applicant is not accurate on dates of events, and it is reasonable that he thought his debts were more than seven years old. He provided negative financial information, which is not on his credit reports. This information placed the Government on notice that he had financial problems. The Government has not established that Applicant intentionally falsified his e-QIP answers. Guideline E is found in favor of Applicant.

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

¹⁵See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

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.¹⁶

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. While Applicant should have paid closer attention to the information requested in the e-QIP and his answers, his inattentiveness to details is insufficient for a finding of intentional falsification of his e-QIP. When his fiancé left him eight years ago, Applicant lost interest in everything in life. He stopped paying his bills and eventually stopped paying his mortgage. Before the mortgage lender foreclosed on his house, he sold it through a short sale in 2013. Applicant's personal life has improved greatly in recent years as has his ability to take control of his personal finances. He has not taken any steps in the last seven years to resolve any of the debts he stopped paying. While these debts are no longer collectible under state law, his "conscious" decision to avoid paying these debts

¹⁶In 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.

over this period of time when he had sufficient resources to make an effort to resolve some of the debts reflects a lack of responsibility and good judgment. His actions regarding these old debts and his failure to provide relevant documentation to support his request for a security clearance weigh against the grant of a security clearance. He is improving his level of responsibility, but sufficient time has not elapsed to support his request that he should be granted 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 mitigated the security concerns arising from his personal conduct under Guideline E, but he has not mitigated the security concerns about 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
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.i:	Against Applicant
Paragraph 2, Guideline e:	FOR APPLICANT
Subparagraph 2.a:	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