



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



In the matter of:)	
)	
)	ISCR Case No. 14-02542
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

08/11/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on July 10, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 21, 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 November 14, 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 June 5, 2015. Applicant received the FORM on June 10, 2015. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated June 30, 2015. DOHA assigned this case to me on July 27, 2015. The Government submitted seven exhibits, which have been marked as Items 1-7 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

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 47 years old, works as a telecommunications analyst for a DOD contractor. He began his current position in November 2011, where he has worked as a contractor since 2002. Applicant enlisted in the United States Navy in April 1987 and served on active duty until April 2001 when he received an honorable discharge. The Navy discharged him for disability.¹

Applicant graduated from high school in 1986, and he received his bachelor's degree in 2005. At the time of his personal subject interview in August 2012, Applicant needed three credits to complete his masters degree. Applicant and his wife married in December 1991. He has 25-year-old son, a 30-year-old stepson, and a 28-year-old stepdaughter.²

The SOR alleges five debts totaling \$14,775. SOR allegation 1.a (\$11,772) concerns a car the Applicant voluntarily returned because the car had multiple mechanical problems. Applicant sought information about how to report the mechanical problems under the Lemon laws. The creditor sold the car while Applicant sought this information and transferred the remaining debt to him. Applicant contacted the creditor in October 2014 and made arrangements to pay this debt. He and the creditor agreed that Applicant would pay \$352 a month until the debt was paid in full beginning in January 2015. In his response to the FORM, Applicant attached a copy of two account

¹Item 3.

²Item 3; Item 4;. AE A, p. 10.

statements from the creditor, showing a payment of \$250 in April 2015 and again in May 2015. The account number on these statements matches the account number for this creditor shown on credit reports in the record. Applicant advises that these documents show monthly payments on this debt. The account statements do not indicate a beginning balance of the amount owed. In addition, the two payments made are lower than the amount he negotiated in October 2014. Given that the account numbers are the same, I find that Applicant is making monthly payments on this debt.³

In his response to the SOR, Applicant provided documentation showing that he paid the \$81 debt in allegation 1.b, the \$240 debt in allegation 1.c, and the \$96 debt in allegation 1.d. He paid the last debt in 2012. Applicant was unaware of the debts in allegations 1.b and 1.c. He investigated the debts and paid them shortly after receiving the SOR in October 2014.⁴

The final SOR debt relates to a \$2,586 bill for a class at a university. In the spring of 2011, Applicant sent a timely email to the university to drop the class because he could not take the class that semester. When he received a bill for the class, he contacted the university about forgiveness of the debt. After receiving the SOR, he filed a petition with the university asking forgiveness of the debt on October 2014. On June 17, 2015, the University advised that his actual debt totaled \$1,940 and forgave the debt. Applicant no longer owes this debt.⁵

Applicant has not provided a budget showing his monthly income and expenses. In his response, he indicated that his financial problems began after his wife stopped working in 2008. In his personal subject interview, he advised that his wife lost her job in 2011, which created some financial problems for them. The most recent credit report does not reflect any other outstanding debts. The record lacks any evidence of 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

³Item 2; AE A.

⁴Item 2.

⁵Item 2; AE A, p. 3-5.

⁶Item 4; AE A.

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.

The guideline notes several disqualifying conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant developed financial problems when his wife stopped working. At the time the SOR was issued, most of the debts had 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.

The loss of employment by Applicant’s wife, if involuntary, would have been a factor beyond his control. The mechanical problems with his car are also a factor beyond his control. AG ¶ 20(b) has some applicability because of the factors beyond his control. However, the record lacks any evidence that he acted reasonably under the circumstances to resolve his debts.

The record lacks any evidence that Applicant received financial counseling. He has paid the three smaller debts and resolved the university debt. After receiving the SOR, he contacted three of the five creditors and made arrangements to pay the debts owed after establishing that two of the debts were his. He had paid one debt before the issuance of the SOR. He requested the university to forgive its debt because he had timely asked it to drop the class. The university agreed. Applicant’s actions show a good-faith effort to resolve his debts. His most recent credit report does not show new debts, which indicates that his finances are under control. AG ¶¶ 20(c) and 20(d) are 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.⁷

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant

⁷In 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.

has taken control of the largest SOR debt and is paying it through a monthly payment plan. Once he determined that he owed two small debts, he resolved them. The remaining unpaid debt to the university has been forgiven because Applicant never took the class and timely requested that the course be dropped from his schedule in 2011. Applicant's finances are under control, and his debts resolved. He has shown a meaningful track record of debt payment by paying the two debts in the SOR and other debts as indicated in his credit report. See note 7, *supra*. He has not acted irresponsibly about his debts, and the record lacks any evidence that Applicant has been involved in illegal or questionable behavior or conduct. Of course, the issue is not simply whether all his debts are paid: it is whether his financial circumstances raise concerns about his fitness to hold a position of trust. While he is paying one debt and will be for a while, this is insufficient to raise a security concern. (See AG ¶ 2(a)(1).)

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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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 a security clearance is granted.

MARY E. HENRY
Administrative Judge