



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-03126
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: Ryan C. Nerney, Esquire

06/17/2015

**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 January 1, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on August 25, 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 August 29, 2014. He submitted a notarized, written response, with attachments, to the SOR allegations. Through recently retained counsel, 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 February 19, 2015. Applicant received the FORM on March 6, 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 April 16, 2015. DOHA assigned this case to me on May 12, 2015, which I received on May 19, 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. With his written response to the FORM, Applicant submitted additional documentation, which is marked and admitted as Applicant Exhibit (AE) A through O.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted responsibility for the debts alleged in allegations in ¶¶ 1.a - 1.f of the SOR, but denied that the debts had not been resolved. 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 review of the evidence of record, I make the following findings of fact.

Applicant, who is 41 years old, works as a senior systems engineer for a DOD contractor. He began his current employment in August 2010. Coworkers and managers praised his skills and work. Many have worked with Applicant for a number of years. They described him as highly competent, reliable, trustworthy, and a man of integrity. He follows security procedures. They support the grant of a security clearance for him. None indicate an awareness of the issues raised in the SOR.<sup>1</sup>

Applicant graduated from high school then attended a bible college, receiving an associate's degree in pastoral theology. He worked as a youth pastor in a new church. To provide financial support for himself, he also worked delivering pizza before becoming the assistant store manager. In 2001, Applicant changed careers. He attended a technical college and received several certifications in information technology (IT). He has worked in the IT industry since 2001, and he has received awards for his skills.<sup>2</sup>

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<sup>1</sup>Item 5; AE A.

<sup>2</sup>Item 7; AE B; AE C.

Applicant married his first wife in 1999, and they divorced in 2009. He has a 15-year-old son and 12-year-old daughter from his marriage. His children live with him. He married his present wife in 2013. She has a daughter, who also lives with him.<sup>3</sup>

Applicant initially developed financial problems when he and his first wife divorced, leaving only his income to support his family and pay his bills. Prior to their marriage in 2013, Applicant's current wife was entangled in a tumultuous divorce, which caused significant financial strain for her. She and Applicant combined their finances to help pay her legal expenses to obtain full custody of her daughter, a decision which impacted their finances. After they married, his wife's work schedule was reduced to part time in March 2014. Her employer laid her off in June 2014, causing a loss of her income of \$88,000. She returned to work in September 2014, earning \$60,000 a year.<sup>4</sup>

The SOR alleges six debts. Allegation 1.a concerns Applicant's past-due mortgage on his home. In his response to the SOR, Applicant indicated that he had applied for a loan modification of his mortgage. He provided a copy of a letter, dated April 17, 2014, from the mortgage lender advising that he had been approved for a trial payment program. The trial program required Applicant to make three payments of \$1,017.38 beginning on June 1, 2014. He provided documentation showing that he made these payments as required. On March 6, 2015, the mortgage lender denied his request for a permanent loan modification without a clear explanation of the reason for the denial.<sup>5</sup> To avoid foreclosure and with the approval of the mortgage lender, Applicant has retained a real estate agent and listed his home for sale on March 26, 2015, as a short sale.<sup>6</sup>

SOR allegation 1.b concerns a credit line with a bank, which is past-due for \$14,192. He denied that the debt was charged off as listed on the January 26, 2013, April 7, 2014, January 26, 2015, March 25, 2015, and April 13, 2015 credit reports.<sup>7</sup> Applicant contacted the creditor in 2014 and developed a monthly payment plan. He agreed to pay the creditor \$250 a month through an automatic deduction from his banking account until the debt was paid. He made his initial payment in April 2014 and continues to make his monthly payment. His balance on his debt, as of March 1, 2015, was approximately \$11,950.<sup>8</sup>

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<sup>3</sup>Item 5; AE B.

<sup>4</sup>Item 3; AE B; AE F.

<sup>5</sup>The denial letter sets forth at least six different reasons for the denial, but does not indicate which reason applied to Applicant. AE N.

<sup>6</sup>Item 3; AE B; AE N.

<sup>7</sup>Item 6; Item 8; and Item 9; AE I; AE J.

<sup>8</sup>Item 1; Item 3; AE H.

The \$2,318 debt in SOR allegation 1.c relates to a credit card. The three 2015 credit reports show this debt as paid.<sup>9</sup> SOR allegation 1.d concerns a \$1,131 past-due line of credit. Applicant verified that this debt is paid in full.<sup>10</sup>

The \$7,677 debt in SOR allegation 1.e relates to a time-share property. Applicant and his first wife purchased a time-share property in 2001. After their divorce, they returned the property to the time-share corporation. Applicant advised that he received a 1099 tax form on this property. The January 26, 2015 and March 25, 2015 credit reports show a zero balance on this debt.<sup>11</sup>

The final SOR debt of \$1,392 concerns an athletic club membership. Applicant denies membership in this club at any time and advises that the club does not show a record of him belonging to it. He did not provide any letter from the club confirming that he was not a member. The debt is listed on the January 26, 2013 and April 13, 2015 credit reports.<sup>12</sup>

Although not alleged, the January 26, 2015 credit report shows an unpaid phone debt of \$81, a tax lien of \$705 filed in March 2014, and a charged off student loan for \$10,493. In his response to the form, Applicant addressed these debts. He provided proof that his state tax refund for the tax year 2014 was used to pay the tax debt and that the remainder of the tax refund was mailed to Applicant. He contacted the bank holding the student loan and reached an agreement to repay this loan at the rate of \$286 a month through automatic payments from his bank account until paid as shown by a letter dated March 19, 2015. In his supplemental response to the SOR, Applicant indicated that he paid the \$81 phone bill.<sup>13</sup>

The credit reports of record reflect that Applicant paid two additional state tax liens and three other past-due accounts. Applicant provided documentation indicating that he recently completed financial credit counseling courses.<sup>14</sup>

Applicant submitted an undated personal financial statement. He indicated that his net household monthly income is \$8,994. His monthly expenses include \$2,100 for rent, \$1,000 for food, \$750 for utilities, including phones, \$670 for car expenses, \$250 for medical expenses, and \$300 for miscellaneous expenses. His monthly expenses total approximately \$5,070. He listed seven debts on which monthly payments are made. These debts included the \$286 monthly payment on his student loan and his

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<sup>9</sup>Item 3; Item 9; AE I; AE J.

<sup>10</sup>Item 1; Item 3; AE L.

<sup>11</sup>Item 1; Item 3; Item 9; AE I.

<sup>12</sup>Item 1; Item 3; AE J.

<sup>13</sup>Item 9; AE K; AE M; Supplemental Response to SOR.

<sup>14</sup>Item 6; Item 9; AE D.

\$250 monthly payment to the creditor in allegation 1.b. The monthly payments totaled \$1,755. After payment of his bills, Applicant has a net remainder of \$2,169 for unanticipated expenses.<sup>15</sup>

## **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.

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<sup>15</sup>AE E.

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 when he and his first wife divorced, and his second wife lost her job. He failed to pay taxes owed when he filed his state income tax return in 2013. Most of the debts had not been resolved at the time the SOR had been issued. 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;
- (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.

Applicant's financial problems began when he and his first wife divorced, and his income provided the only financial support for his family. His finances were further compromised by his second wife's divorce and custody battle, and the loss of her work hours, followed by the loss of her job in 2014. These are circumstances beyond his control. He paid several small debts before the issuance of the SOR. In 2014, he sought a modification of his mortgage payment, and he negotiated a payment for a line of credit. He paid one SOR debt sometime ago and received a 1099 for the timeshare in 2013. More recently, he resolved two other debts. Applicant has not ignored his debts; rather he has taken action to regain control of his finances and debts. Applicant had financial counseling and has sufficient income to pay his customary and usual living expenses. Applicant initiated contact with his creditors in an effort to resolve his debts. Through his efforts, he developed payment plans for two of his largest debts, and he paid several smaller debts. AG ¶¶ 20(b), (c), and (d) apply.

Applicant has legitimate reasons to dispute the athletic club debt. I find his denial of membership is creditable even though he did not provide a letter from the athletic club because he has been straight forward about his debts throughout this process. AG ¶ 20(e) 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.

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’s financial problems arose when he divorced, after his second wife’s work hours were reduced, and she subsequently lost her job. Applicant has taken responsibility for his debts and worked to resolve them. His efforts to modify his mortgage loan were rejected by his lender. With the lender’s authorization, he is now selling his home. He worked with his creditors to resolve his debts. His past-due debts are resolved or in payment plans. He has shown a track record for debt resolution, and he has a plan to resolve his remaining debts. He is not required to be debt free to hold a security clearance. Rather, he must establish that he can live within his income and that he is responsible about his finances. Applicant has done so.

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
Subparagraph 1.f:	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.

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MARY E. HENRY  
Administrative Judge