



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



In the matter of:)	
)	
)	ISCR Case No. 08-04927
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

November 24, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF 86) on July 23, 2007. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on February 26, 2009. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 8, 2009. He answered the SOR in writing, initially, on April 19, 2009, and additionally on May 12, 2009. He

requested a hearing before an administrative judge. DOHA timely received the hearing request. Department Counsel was prepared to proceed on July 24, 2009, and I received the case assignment on July 28, 2009. DOHA issued a notice of hearing on August 4, 2009, and I convened the hearing as scheduled on August 26, 2009. The government offered eight exhibits (GE) 1 through 8, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted nine exhibits (AE) A through I, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on September 3, 2009. I held the record open until September 15, 2009, for Applicant to submit additional matters. On September 14, 2009, he submitted eight additional exhibits, AE J through AE Q, without objection. The record closed on September 15, 2009.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.d-1.g of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b, 1.c, and 1.h of the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 34 years old, works as a production manager for a Department of Defense contractor. He began this position in October 2008 after relocating from another state. The record contains no evidence that shows he mishandled classified information or that he has performance issues at work.²

Applicant married in 1998. He has three children, ages 12, 8, and 7 from his marriage. He and his wife divorced in June 2008. His children live many miles from him, with his former wife and her new husband.³

Until 2004, Applicant managed his finances well. In 2004, a major hurricane seriously damaged his home. The damage included loss of his roof and significant water damage, requiring he and his family to live in a hotel for at least a month. His homeowner's insurance paid for all repairs in excess of Applicant's nine percent deductible.⁴ Applicant estimated that he personally paid approximately \$20,000 in repair costs for damages to his home from the hurricane. He financed the repairs with his

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).

²GE 1; Response to SOR.

³*Id.*; AE J; Tr. 27.

⁴Applicant changed insurance companies after this damage. Under the new insurance policy, his deductible would have been only two percent for future property damage.

savings and a line of credit with the bank. When they were doing the repairs, he and his wife decided to do some improvements to the property.⁵

Applicant worked for a company for eight years. During his tenure of employment, the company promoted him from employee to supervisor, to quality assurance manager, to senior director and project manager, and finally, to vice president in 2005. In March 2005, his company experienced a reduction in business, which resulted in reduced hours for all employees and managers. Applicant's work hours and income declined by 20%. This work and income reduction lasted three months. Applicant used his remaining savings to pay his bills.⁶

In November 2005, his company again experienced a decline in business, which lasted at least 10 months. They company reduced his, and all employees, hours and pay by 20%. As an officer, the company further reduced his pay by another 10%. He used his 401k assets to pay his bills. Applicant resigned his position in August 2006 because he was unsure if his job would continue. He accepted another, more stable position at a lower salary. In November 2006, he obtained a part-time job delivering pizzas to help with his finances. He also contacted debt consolidation firms to help him manage his debt problems, but all declined to help.⁷

In January 2007, he and his former wife filed for Chapter 13 bankruptcy in an effort to stabilize their monthly expenses and resolve their debts. He reported this decision to the facility security officer at his employment. Under the court approved payment plan, Applicant paid \$3,180 a month on his debts. He made his bankruptcy payments until July 2007, when he received notice that his monthly mortgage payment would increase several hundred dollars. At this time, he learned that the monthly bankruptcy payment would also increase by the same amount. He mistakenly believed that when he filed bankruptcy, his adjustable rate mortgage could not change, and thus, his monthly payment would not increase. When he realized that his monthly bankruptcy payment would increase, he sought advice from his bankruptcy attorney. He then decided to have his case dismissed. He did not realize that the dismissal would be for non-payment.⁸

By the summer 2007, Applicant's former wife agreed to seek help because of her alcohol consumption. Her drinking impacted his work, as he needed to leave work to care for their children, even though his wife did not work. Qualified physicians diagnosed her as alcohol dependent. She entered a treatment program in July 2007

⁵Response to SOR; Tr. 35-36, 52, 62.

⁶Response to SOR; Tr. 37.

⁷Response to SOR and attachments; Tr. 32.

⁸*Id.*; Tr. 42-45.

and has remained sober. Applicant estimated her alcohol consumption cost at least \$300 a month, which contributed to his financial problems.⁹

Following the dismissal of his Chapter 13 bankruptcy, Applicant retained the services of a debt consolidation firm on September 26, 2007. He also worked with his mortgage company to resolve his debt issues and to stop any foreclosure proceedings. In November 2007, he and his family moved out of their house into a rented town house. On December 5, 2007, his mortgage company filed a line of satisfaction of mortgage with the state court. The mortgage company agreed that his mortgage debt had been paid in full.¹⁰

His wife asked for a divorce in February 2008. Although he learned that she was involved with another man, he worked to reach a fair resolution of their issues. Their divorce became final in June 2008. His children live with her and visit him, when he can pay for the plane tickets. He understood that he would be responsible for joint debts incurred in his marriage, but not his wife's sole debts. The creditors and collection companies for his wife sole accounts are seeking reimbursement from him for her debts incurred while they were married. His former wife does not work.¹¹

Applicant accepted a job offer from his current employer and moved from where he lived to another state many miles away in October 2008. He received a \$5,000 salary increase with his new position, which is offset by a higher cost of living. He stays in contact with his children, but he sees them infrequently because it is expensive to travel.¹²

Applicant currently earns \$6,731 a month in gross income and \$4,651 a month in net income. His monthly expenses average \$4,410 and include rent, utilities, transportation costs, a school loan, and child support. He has a remainder of \$240 each month. Applicant verified that he pays his current monthly bills.¹³

After reviewing the credit reports dated August 28, 2007; September 24, 2008; December 4, 2008; May 11, 2009; August 25, 2009; and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:¹⁴

⁹Response to SOR and attachment; Tr. 38, 47.

¹⁰Response to SOR and attachments.

¹¹Response to SOR and attachments; Tr. 46.

¹²Tr. 27, 39-41.

¹³Response to SOR; AE A-AE F; AE P.

¹⁴GE 3 (Credit report, dated August 28, 2007); GE 5 (Credit report, dated September 24, 2008); GE 7 (Credit report, dated December 4, 2008); GE 9 (Credit report, dated August 25, 2009); AE K (Credit reports, dated May 11, 2009 and August 25, 2009).

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS	EVIDENCE
1.b	Credit card	\$ 733.00	No account in his name; former wife's account	Response to SOR; GE 4 - former wife's letter of July 11, 2008
1.c	Store account	\$ 442.00	No account in his name; not on credit reports	GE 3; GE 5; GE 7; GE 9; AE K ¹⁵
1.d	Bank line of credit	\$26,850.00	Unpaid	Tr. 49-50
1.e	Credit card	\$ 2,522.00	Unpaid ¹⁶	Tr. 55
1.f	Credit card	\$14,947.00	Unpaid	Tr. 56
1.g	Financing	\$ 5,343.00	Unpaid	Tr. 57
1.h	Medical bill	\$ 295.00	Unpaid; disputed, but dispute not verified as reasonable	Response to SOR; Tr. 60.

Two months prior to the hearing, Applicant discharged the debt consolidation firm with whom he had been working. The firm refused to include all his overdue debts in their repayment plan. He paid this company \$3,000 in servicing fees.¹⁷

At the hearing, Applicant discussed to two different creditors that may have held the debt alleged in SOR ¶ 1.d. He believed these creditors purchased this debt at different times. Because he experienced difficulty determining who owned these debts, he made two payments of \$200 each to each of the collection agents in October and November 2008 on accounts not listed in the SOR and not resolved. The account numbers on his checks do not match the account numbers in the credit reports. While these accounts and the account in allegation 1.d may be the same, the evidence of record does not indicate the accounts are the same. These two creditors refused to develop a repayment plan with him. Applicant has filed a dispute for one of these debts.¹⁸

¹⁵Of the five credit reports in the record, this debt appears only on the credit report dated September 24, 2008. See GE 5.

¹⁶Applicant believed this debt belonged to his former wife. In her letter of July 11, 1008, his former wife lists an account with this creditor and an account number. His former wife's account number does not match the account number of a debt with this creditor listed on Applicant's May 11, 2009. GE 4; AE K.

¹⁷GE 4, attachments; AE N; Tr. 50-52.

¹⁸GE 4, attachments; AE L; AE M; Tr. 67-68.

Subsequent to the hearing, Applicant contacted and retained a bankruptcy attorney, instead of a debt consolidation firm. With the help of counsel, Applicant plans to file a Chapter 13 bankruptcy petition. As required by the bankruptcy court, Applicant participated in debt counseling. He also underwent debt counseling during his previous bankruptcy filing and with the debt consolidation firm.¹⁹

A co-worker and friend testified on Applicant's behalf. He has known Applicant for 10 years. As he was the facility security officer, the witness verified that Applicant discussed the reporting requirements for finances and his clearance in 2006 and that an incident report was filed related to Applicant's first bankruptcy. He verified the hurricane damage to Applicant's home. He testified that Applicant lives a much more meager lifestyle and lives within his financial means. Applicant is extremely honest and hard working. He does an outstanding job. Other co-workers agree with this assessment of Applicant. His former wife and her husband also wrote a letter of recommendation on his behalf.²⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

¹⁹AE Q; Tr. 80.

²⁰AE J; Tr. 90-93.

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 as to 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 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 accumulated delinquent debt and has unable to pay his obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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.” Applicant’s financial worries started in 2004 when a hurricane damaged his home, and by 2006, his financial

problems were severe. His finances continued to deteriorate until 2008. Because of the business downturn, hurricane, alcoholic wife, and divorce, I find that this mitigating condition is not applicable because these problems are recent and ongoing.

Under AG ¶ 20(b), it may be mitigating where “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.” Applicant’s financial problems started in 2004 when a hurricane damaged his home. Because he had a nine percent deductible, he paid a significant amount in repairs, using a bank credit line and his savings. Six months after the storm damage, his employer reduced his work hours and income by 20% for three months due to a business downturn. He used his remaining savings to pay his bills. Five months after he returned to work full-time, his employer again reduced his work hour by 20% and his income by 30%, as he was an officer. Applicant began to fall behind in his bills and unsuccessfully attempted to hire a debt consolidation firm. In an effort to manage his finances and save his home from foreclosure, he filed a Chapter 13 bankruptcy petition. He complied with the repayment terms until his mortgage payment increased significantly. After the bankruptcy case was dismissed, he worked with his mortgage company and resolved his mortgage debt. His wife’s excessive monthly spending on alcohol impacted his ability to pay his debts until the summer of 2007. In 2008, his wife asked for a divorce. Their divorce became final in June 2008. When he first encountered financial problems, he used his savings, a bank loan and retirement funds to resolve his debt issues. In doing so, he acted reasonably. However, his problems, financial or otherwise, continue. Because Applicant has significant, unpaid bills and has had ample time to develop a plan to resolve his debts, this mitigating condition cannot be fully applied at this time.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Applicant has been through debt counseling three times and hired a debt consolidation company to help him with his debts. The debt consolidation company would not work with many of his creditors, so his has discontinued his services with this company. He established that the debt in SOR allegation 1.a belongs to his former wife and that the debt in SOR allegation 1.b is not his. This mitigating condition is only partially applicable because his major outstanding debts remain unresolved, and he has not made sufficient progress in his current Chapter 13 bankruptcy to receive full mitigating credit.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant does not have an established payment plan for his major SOR debts. He intends to develop a plan through bankruptcy, however, his future intent is insufficient for me to apply this mitigating condition.

Under AG ¶ 20 (e), mitigation may occur if “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 disputed the debt listed in SOR allegation 1.h on the grounds that this medical bill should have been paid by the insurance company. As he has not provided a copy of any formal dispute on this debt, this mitigating condition is not applicable. He also disputed his responsibility for the debts in SOR allegations 1. and 1.b. I am satisfied these two debts totaling \$1,175 are not his debts.²¹

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.

The evidence in support of denying a security clearance to applicant under the whole person concept is more substantial than the evidence in support of granting his security clearance. In reaching this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant moved up rapidly in his job between 1998 and 2005, increasing his household income. He also spent more money. In 2004, the first of many financial setbacks began when a hurricane struck where he lived and significantly damaged his house. As he tried to recover from this damage and its financial impact, his job required him to reduce his work hours and take a pay cut for three months. The loss of income further strained his household finances. He managed to pay his bills until a second and

²¹AG ¶ 20(f) is not applicable.

more lengthy work slow down began in November 2005. Although he used his 401K money to help pay his bills, he exhausted this money and his savings. His debt problems continued despite his efforts to resolve the debts. He filed for bankruptcy in 2007, but stopped his payments when his monthly mortgage payment increased by several hundred dollars. He eventually reached a resolution of his mortgage debt by returning his house to the mortgagor. His wife's alcoholism and their subsequent divorce created additional financial strain for him. Throughout all his problems, Applicant tried, not always successfully, to resolve or manage his debts. Applicant has made a diligent effort to gain control of his finances, but his unpaid debts are significant. He recently started the process to file a second Chapter 13 bankruptcy. At this time, Applicant manages his current monthly living expenses without generating additional delinquent debt. His problem remains the significant unpaid debt he still has, which is not resolved and remains a security concern.

Should he develop a manageable repayment plan through the bankruptcy court and establish a track record of compliance with his payment plan, he can reapply for his clearance in a year and his application should be favorably considered.

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 has not mitigated the security concerns arising from his finances and 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge