



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



In the matter of:)	
)	
)	ISCR Case No. 08-10302
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

March 4, 2010

Decision

HENRY, Mary E., Administrative Judge:

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

Applicant executed and signed his Security Clearance Application (SF 86) on July 17, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on July 10, 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 July 22, 2009. He answered the SOR in writing on August 5, 2009, and requested a hearing before an administrative

judge. DOHA received the request on August 10, 2009. Department Counsel was prepared to proceed on September 18, 2009, and I received the case assignment on October 8, 2009. DOHA issued a notice of hearing on October 19, 2009, and I convened the hearing as scheduled on November 3, 2009. The government offered five exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant and one witness testified. He submitted three exhibits (AE) A through C, which were admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on November 12, 2009. I held the record open until December 2, 2009 for Applicant to submit additional matters. He timely submitted seven Exhibits, AE D through AE J, which are admitted without objection. The record closed on December 2, 2009.

Notice

At the hearing, Applicant testified that he did not know when he received the hearing notice. (Tr. 9.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. 9.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.c and 1.d of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, 1.b, and 1.e 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 an ECS Technician for a Department of Defense contractor. He began his current employment in September 2007. His supervisor hired him because Applicant was highly recommended. He considered Applicant an outstanding and knowledgeable employee. He described Applicant as a trustworthy, honest, and reliable person, who strived to do the best. Applicant has not had any disciplinary issues.²

Applicant became a father in July 1993, while still in high school. He graduated high school in 1994. He attended trade school, where he learned air conditioning skills. Applicant married in 2001 and anticipates the birth of a daughter in January 2010.³

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).

²GE 1; Tr. 22-26.

³GE 1; Tr. 29.

After Applicant's son was born in 1993, he provided money for his son's support without any defined agreement. When his son was five years old, Applicant obtained a court order for specific monthly support. Applicant regularly paid approximately \$330 a month in child support and his arrearage. In the summer of 2009, Applicant obtained custody of his 16-year-old son, who now lives with him. Child support is still being withheld from his paycheck. He is working to correct this problem.⁴

Applicant and his wife purchased a small house in 2002 for approximately \$80,000. In 2004, when the market value of the house increased, he refinanced the house for \$120,000, using the equity to pay other debts. His new monthly mortgage payment was \$900. In 2004, two hurricanes damaged his home. His house sustained minimal damage from the first hurricane, but the damage from the second hurricane totaled almost \$20,000. His insurance company paid \$10,000 for the damage. He obtained a loan for \$7,000 for house repairs. He used his own funds to pay the remaining repair costs, which he performed. If he delayed the house repairs, he and his wife would be required to live with his parents.⁵

In 2007, two events impacted his ability to afford his house. His works hours at his then-employer declined. Based on the booming real estate market, the State assessed his home value at \$180,000, leading to a significant increase in his real estate taxes and insurance premiums. His monthly payment increased from \$900 a month to \$1,400 a month. He could not afford the \$500 monthly increase. He tried unsuccessfully to work with his mortgagor. When he could not make his monthly payments, he tried to sell his house. He failed and the mortgagor foreclosed in 2008.⁶

Applicant's current hourly rate of pay varies each month, but has increased \$10 an hour since he began his current employment.⁷ He also regularly earns overtime at his current job. Applicant's net monthly pay in September and October 2009 averaged \$5,700 with overtime. Without his overtime earnings, his monthly net income would average around \$3,000. His wife works part-time, and her net monthly income averages \$850 a month.⁸

Applicant developed a budget based on his expenses for September 2009 and October 2009. His monthly expenses average \$3,100. His budget does not include child

⁴AE G; AE I; Tr. 29, 40-41.

⁵GE 3; Tr. 29-30.

⁶GE 3; Tr. 30-31, 37-38.

⁷Applicant provided copies of eight leave and earnings statements from September 11, 2009 through November 6, 2009. These statements indicated that his actual monthly wage declined from \$32.80 in September 2009 to \$26.76 an hour in October 2009 and increased to \$33.11 an hour for the first paycheck in November 2009. He earns overtime regularly, but not every pay period. His overtime rate of pay depends upon his base rate of pay. AE I.

⁸AE I.

care expenses if his wife returns to work after the birth of his daughter. He had \$5,500 in savings at the time of the hearing. On November 30, 2009, he opened a separate savings account and deposited \$4,500 of his savings in this account. He designated this money specifically for payment of his mortgage debt, discussed *infra*. He plans to apply his overtime earnings to the payment of his mortgage debt. His monthly truck payment will be completed in October 2010 and he plans to also use this money towards repayment of his mortgage debt.⁹

When his bank foreclosed on his house in 2008, the bank obtained title to his property. In December 2008, Applicant inquired about the amount owed on his mortgage loan. The bank advised that he owed the amount shown on his credit report, \$122,841. The bank also advised that this amount would adjust once the proceeds from the sale of his house had been applied. The bank sold Applicant's house in October 2009 and scheduled the closing for October 31, 2009. The closing date changed to November 30, 2009. At the close of the record, the bank had not yet settled on the resale of his house.¹⁰

Applicant offered to make payments on his mortgage debt several times. In his response to the SOR, Applicant indicated that in August 2009, he had reached an agreement to pay the bank \$200 a month on his mortgage and loan debts. This agreement was not finalized. The bank acknowledged his offers at resolving his debts in a letter dated November 9, 2009. It further advised that it could not develop payment arrangements with Applicant until the property sold and the actual deficiency balance is determined.¹¹ Applicant's unpaid \$7,000 loan, in allegation 1.c, will be included in the mortgage repayment plan.¹²

When Applicant met with the investigator in September 2008, the investigator reviewed Applicant's 11 unpaid debts, many of which Applicant acknowledged. The July 2008 credit report, on which the investigator relied, reflected nine past due or collection accounts, including his mortgage and a \$7,000 loan. The investigator also reviewed two bank loans in the amounts of \$15,000 and \$16,000 with him. Applicant did not recognize the two loans. Both credit reports in the record reflect two paid automobile loans with the bank, but do not show two unpaid loans. The SOR does not contain any allegations on the \$15,000 and \$16,000 debts.¹³

⁹AE D; AE E; AE H; Tr. 47.

¹⁰Because the bank continued the closing date on Applicant's house until November 30, 2009, on or about January 23, 2010, I conducted a telephone conference with Applicant and Department Counsel concerning the status of Applicant's discussions with the bank and his mortgage debt. He advised that the settlement of his house occurred in mid-December and that he was resolving his debt issues with the bank. I requested additional information regarding the status of his loan, but I have not received any information.

¹¹GE 2, p.11; AE D; Tr. 32.

¹²AE F; Tr. 31-32, 37-38.

¹³GE 3; GE 4; GE 5.

Applicant told the investigator that he planned to pay the smaller debts within the year. Interrogatories mailed to Applicant in late 2008 identified nine debts. Applicant provided information showing payment arrangements on five small accounts. He also addressed the status of his mortgage debt. Since December 2008, Applicant has paid all his small debts, including the three debts listed in the SOR (allegations 1.a, 1.b, and 1.e). His current bills are paid and are not in arrears.¹⁴

Co-workers, friends, and his pastor recommend Applicant for a security clearance. They describe him as trustworthy and hardworking. His co-workers opine that he is a man of integrity and is dependable and unselfish. He has told his supervisor and several co-workers about his financial issues.¹⁵

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 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.

¹⁴Response to SOR and attachments; GE 2; GE 4; AE C; Tr. 50.

¹⁵Response to SOR; AE A; AE B; Tr. 24-25.

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, that he was unable to pay. The evidence is sufficient to raise these potentially disqualifying conditions.

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, 200). 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.

Guideline F 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 arose in 2004 and continue to the present. This mitigating condition does not apply.

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 arose, in part, when a hurricane damaged his home and insurance failed to provide sufficient money to repair his home. He chose to repair his home so that he and his wife could live in their home and not with his parents. Because of this decision, he could not pay all his bills. When the State assessed the value of his house at \$180,000 in 2007, which resulted in a \$500 increase in his monthly mortgage payment, Applicant could not pay it, in part due to a decline in his work hours. He tried to sell his house. When he could not, he had no choice but to allow it to go to foreclosure. I find this potentially mitigating condition is partially applicable as the hurricane, the sudden \$500 increase in his monthly mortgage payment, and loss of work hours were conditions beyond his control. In addition, he tried to sell his house, a reasonable action under the circumstances.

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). 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 has not received financial counseling; however, he has developed a sound budget to manage his finances. His monthly bills are current. When the investigator provided him with information about his outstanding debts,

Applicant indicated he would begin work on resolving the debts and did so in 2008. He resolved his seven smaller debts by July 31, 2009. He attempted to resolve his two larger debts with the bank, and thought he had done so. The bank, however, has not cooperated with him, and has acknowledged that it would not develop a payment plan until the sale of Applicant's house finalized. He is still working on a payment plan. I conclude these potentially mitigating conditions apply to allegations 1.a, 1.b, and 1.e, and have some applicability to allegations 1.c and 1.d.¹⁶

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 granting a security clearance to applicant under the whole person concept is substantial but not determinative. 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 debts arose after his house sustained significant damage from a hurricane in 2004, his mortgage increased by \$500 when his property value escalated, and his work hours declined. His attempt to sell his house was unsuccessful, as real estate sales declined. He paid his smaller debts as promised and set aside money for making his mortgage loan repayment once the debt is determined. Applicant is moving in the right direction, but has not yet shown that he

¹⁶AG ¶¶ 20(e) and (f) are not applicable in this case.

has actually resolved the two large remaining debts. He failed to provide the requested information about his debt resolution with the bank and has not explained why. Applicant needs more time to show what he has done with his mortgage and bank loan. Should he develop and comply with a repayment plan, he is eligible to reapply for his clearance in a year.

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 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:	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 access to classified information is denied.

MARY E. HENRY
Administrative Judge