



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



In the matter of:)	
)	
)	ISCR Case No. 08-12192
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: Alan Edmunds, Esquire

May 28, 210

Decision

HENRY, Mary E., Administrative Judge:

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

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on August 5, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on July 28, 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 adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on August 10, 2009. He answered the SOR in writing on August 26, 2009. Applicant retained counsel and requested a hearing before an administrative judge. DOHA received the request and Department

Counsel was prepared to proceed on September 4, 2009, and I received the case assignment on January 14, 2010. DOHA issued a notice of hearing on February 2, 2010, and I convened the hearing as scheduled on February 23, 2010. The Government offered eight exhibits (GE), 1 through 5 and GE 8, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted 16 exhibits (AE), A through Q, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 18, 2010. I held the record open until March 25, 2010, for Applicant to submit additional matters. Applicant timely submitted AE R through AE BB, without objection. The record closed on March 25, 2010.

Procedural and Evidentiary Rulings

Notice

Applicant received the hearing notice on February 9, 2010, less than 15 days before the hearing. (Tr. 8.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. After consulting with counsel, Applicant affirmatively waived his right to 15 days notice. (*Id.*)

Evidentiary ruling

Department Counsel offered GE 6, which is a SOR issued on May 27, 2009, and GE 7, Applicant's answer to GE 6, dated June 30, 2009, arguing that Applicant's comments in his prior answer were relevant. Applicant's counsel objected to the admission of these exhibits on the grounds that the Government withdrew the SOR and therefore, Applicant's answer was withdrawn. (Tr. 18-27) I admitted these exhibits, indicating I would determine the weight to be assign to the exhibits. (Tr. 117-120)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.c, 1.d, 1.f, 1.g, 1.i, 1.j, 1.l-1.p, 1.s, and 1.t. His admissions are incorporated herein as findings of fact. He denied the factual allegations in ¶¶ 1.b, 1.e, 1.h, 1.k, 1.q, and 1.r 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 additional findings of fact.

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).

Applicant, who is 40 years old, works as a security supervisor for a Department of Defense contractor. He began his current position in September 2007. Two previous managers wrote letters of recommendation. They describe him as professional, detail oriented, honest, loyal, ethical, and diligent. Both recognized him as an asset to his employer. One suggested that he apply for new positions in his field and provided recommendations whenever he did. His brother expressed gratitude for all that Applicant has provided to the family through his example and support of family members. Applicant served seven and one-half years in the United States Army.²

Applicant married in 1995 and divorced in 1999. His daughter from his marriage is 14 years old. He has sole custody of his daughter and provides for her financial and emotional support. His former wife has little contact with his daughter and provides sporadic child support. The court ordered his former wife to pay him \$455 a month in child support, but she does not pay the child support regularly.³

Sometime ago, his daughter was involved in an automobile accident. Several years after the accident, she started experiencing seizures, which required ongoing medical treatment. He paid all medical costs, not covered by insurance. More recently, Applicant developed a medical problem, the nature of which he declined to reveal. His medical problem requires him to take monthly medications, which cost him \$70 a month. His mother is suffering from terminal cancer, and with the help of his siblings, he is providing emotional support and helping her with decision-making.⁴

Applicant lived in State A from 1998 until August 2005. He lived near a United States military base, and rented houses from service members stationed out of the area. When the owners returned, he moved. In 2001, he began employment with a national company, working about one-hour from his home. In January 2005, he moved his home base closer to his workplace, to be nearer his daughter to take her for medical treatment of her seizures. In August 2008, his job transferred him to State B, about 1,000 miles away. Applicant selected a less expensive place to live in State B, only to realize that the location was not good for his daughter. After one year, he moved to a better location. Six months after this move, in February 2007, his employer transferred him to a position in State C, about 500 miles from State B. His employer paid for one of these moves. Since his current position was a two-hour drive from his residence in State C, Applicant moved closer to his work in September 2007. Between 1998 and 2007, he moved at least eight times. The cost of moving so many times had a cumulative impact on his finances.

When Applicant began his employment with the national company in 2001, he earned \$8 an hour. When he ended his employment with this company, he earned

²GE 1; AE A; AE B; AE C.

³GE 1; Tr. 34-35.

⁴AE R; Tr. 35-38.

\$40,000 a year. His salary with his current employer started at \$60,000 a year. He now earns \$64,000 a year. His net monthly income totals \$3,233, and his monthly expenses average \$2,860.⁵

The SOR identified 20 purportedly continuing delinquencies as reflected by credit reports from 2008 and 2009, totaling approximately \$35,670. 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.

After reviewing the credit reports dated August 13, 2008, February 7, 2009, March 26, 2009, February 22, 2010, 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:⁶

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS	EVIDENCE
1.a	Medical	\$ 46.00	Paid	AE Q, p.4
1.b	Car loan	\$ 7,375.00	Payment plan; \$50 a month ⁷	AE AA; Tr. 41-42
1.c	Loan	\$ 585.00	Disputes, unknown to him	Tr. 42
1.d	Education loan	\$ 1,296.00	Payment plan; one payment	AE Z; Tr. 45-46
1.e	Rent	\$ 3,444.00	Same as 1.n; disputed, this debt removed by one credit reporting company	AE J; Tr. 46
1.f	Utility	\$ 1,188.00	Disputed	AE U; Tr. 47-48
1.g	Loan	\$ 142.00	Paid	GE 5; AE L; AE Q; AE Y

⁵GE 5; AE S; Tr. 34, 66, 77-78.

⁶GE 2 (Credit report, dated September 10, 2008); GE 3 (Credit report, dated December 5, 2008); GE 4 (Credit report, dated March 27, 2008).

⁷Applicant established that he made at least two payments, one in October 2009 and one in February 2010.

1.h	Car Loan (Repossession)	\$10,230.00	Paid; Credit report shows a zero balance	AE G; AE P (August 17, 2009 credit report, p. 2.)
1.i	Medical	\$ 682.00	Paid	AE Q; ⁸ AE BB
1.j	Fees	\$ 1,666.00	Disputes balance, negotiating with creditor; paid \$100	AE W; Tr. 51-52
1.k	Rent	\$ 1,180.00	Paid	AE K
1.l	Rent	\$ 609.00	Disputed as Paid (no receipt)	AE U; Tr. 53
1.m	Medical	\$ 214.00	Paid	AE L
1.n	Rent	\$ 3,443.00	Same as 1.e; payment plan, \$100 month, not verified	Tr. 46
1.o	Medical	\$ 100.00	Paid, not verified	Tr. 55
1.p	Medical	\$ 130.00	Paid	AE F
1.q	Medical	\$ 47.00	Paid	AE F; AE P
1.r	Cable	\$ 107.00	Paid	AE F; AE I; AE P
1.s	Judgment	\$ 3,077.00	Paid	GE 5; AE V; Tr. 56-57
1.t	Insurance	\$ 109.00	Disputed, never had insurance with this company	Tr. 57-58

Applicant paid or resolved \$19,400 or approximately 55% of the debts listed in the SOR. He disputed four debts listed in the SOR, totaling \$2,491. He does not recognize the debt in SOR ¶ 1.b and denies having insurance with the company listed in SOR ¶ 1.t. He paid the debt in SOR ¶ 1.l, and denies owing the utility debt in SOR ¶ 1.f because he did not live at the address or in the state during the time frame given for incurring this debt. He continues to dispute the debt.⁹ Applicant developed payment plans for the debts listed in SOR ¶¶ 1.b, 1.d, and 1.n. He provided some proof of payment, but has not provided documentation showing that he is making regular

⁸The credit report shows name of the collection agent for medical provider. AE Q.

⁹AE U.

monthly payments on these debts. He made at least one payment on the debt in SOR ¶ 1.j. However, he disagrees with the balance and is currently working with the creditor to reach an agreement on what he actually owes.¹⁰

Applicant received interrogatories from the Government around March 1, 2009. He submitted, with his answer, documents showing that he paid three debts listed in the interrogatories, plus evidence of one additional education loan payment. After receipt of the interrogatories and before the issuance of a SOR, Applicant disputed a number of debts, and retained the services of a debt counseling firm to assist in the resolution of his debts. Through this company, he received debt counseling, which taught him how to manage his money, plan out his finances, and stick to his financial plan. He does not rely on the child support payments to pay monthly bills. He developed a payment plan with this company and began paying \$315 a month March 2009. This company agreed to work with him on the resolution of nine debts listed in the SOR. After eight months of payment, Applicant dissolved his working relationship with this company, as none of his debts had been paid or resolved. The company returned about \$300 of his payments to him. He started paying his debts on his own, and he is current on his monthly bills.¹¹

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

¹⁰AE W; AE Z; AE AA; Tr. 41-42, 45-48, 51-52.

¹¹GE 5; AE M; AE N; AE O; AE P; Tr. 58-60.

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 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 was unable to pay some obligations for a period of time. The evidence is sufficient to raise these 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.

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 debts are recent and some are ongoing. This mitigating condition is not applicable.

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 from a variety of issues, including his divorce, low income, unexpected medical expenses, multiple moves, and unpaid child support. Applicant and his wife divorced in 1999 and he received sole custody of their daughter. The court directed his wife to pay him child support, but she has not paid it regularly. Since their divorce, he has worked regularly, but not at high income jobs. Over the last nine years, he has worked to improve his earnings through education and better jobs. He incurred schools loans to pay for his education and has paid all but one of these loans. He rented property from military personnel who were on assignment elsewhere. When these individuals returned, he would move. When his daughter’s seizures began, he moved them closer to his work to be quickly available to help her. Twice in two years, his job required him to move, resulting in moving expenses on one occasion. He developed a medical problem, requiring month medication, which costs him \$70 a month and

lessens the available money for debt repayment. He moved closer to his current job, cutting a two-hour commute and reducing his commuting costs. All these circumstances have impacted Applicant's finances and his ability to repay all his old debts. He acted responsibly under the circumstances in which he found himself. This mitigating condition partially applies.

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 retained the services of a debt counseling firm to help him with repaying his debts in March 2009. Through this service, he received debt counseling, which he described as helpful. He learned to manage his money, plan his expenses, and stick to his financial plan. Although he ended his working relationship with this company after making monthly payments for about eight months because the company failed to pay his debts, he continues to follow the financial advice he received. He has resolved 12 of his SOR debts, totaling \$19,400, and lives within his monthly income. He also developed payment plans for four other debts and has made at least some payments on these plans. He is financially able to meet his regular monthly living expenses. This mitigating condition applies.

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 arranged a payment plan in March 2009 on the judgment. He recently paid the remaining balance on this debt. Since receiving the interrogatories, he has contacted the creditors for his small debts and paid the debts through payments plans or in full. This mitigating condition applies to the debts in SOR allegations 1.g, 1.i, 1.k, 1.m, 1.p, 1.q, 1.r, and 1.s.

Finally, under AG ¶ 20(e), mitigation can be established when "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 disputes four debts listed in the SOR. One debt (1.c) is unknown to him, and he never obtained car insurance with the company in SOR allegation 1.t. Thus, his decision not to pay these debts is reasonable. He did not live at the address, or in the location, at the time the utility company claims he incurred a substantial bill, thus, his decision to dispute this debt is reasonable. He paid the one remaining debt sometime ago and does not wish to pay the debt a second time. Applicant's reason for challenging these debts are reasonable. This mitigation condition applies to SOR allegations 1.c, 1.f, 1.i, and 1.t.¹²

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

¹²AG ¶ 20(f) is not applicable to this case.

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 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 developed significant financial problems after he divorced and assumed total financial responsibility for his daughter. In addition, he earned limited income after leaving the military and did not receive child support as he should have. Medical problems contributed to his financial problems.

During all this time, Applicant sought to better himself through education and training. He accepted better jobs, even those which required him to move long distances. His current job provided him with a \$20,000 increase in his gross income and a significant increase in net pay. With this additional income, Applicant began working on resolving his old debts. By early 2009, he had resolved two education loans. When he answered the interrogatories in March 2009, he provided information, showing that he had paid several debts and that he had retained a debt counseling company to help with his debt resolution. He recognized that he needed to resolve his old debts and assumed responsibility for them. For over two years, Applicant has worked to pay his past due debts, one at a time, and has established a track record for debt resolution. He challenged debts he did not believe were his. If the credit reporting company determined the debt was his, he paid it. His efforts have resulted in a significant reduction of his debt. He still has debts to pay. He has paid some money on these debts and with the payment of other debts recently, he has additional funds available to

continue with his payment plans on these debts. Given his two-year track record for the resolution of his debts and his credible statement that he has payment plans in place for these debts, it is reasonable to assume that he will continue to pay these debts.

Applicant has focused his attention on providing for his daughter. He has learned to manage his money and plan his financial expenses. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) He has not been able to pay all his debts; however, these unpaid debts cannot be a source of improper pressure or duress. 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 security clearance. While some debts remain unpaid, they are insufficient to raise security concerns. (See AG ¶ 2(a)(1).) Applicant's significant efforts over the last two years to reduce his debts outweighs the fact that several debts are not paid in full.

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
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	For Applicant

Subparagraph 1.t:

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 access to classified information is granted.

MARY E. HENRY
Administrative Judge